

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
PART I
FOR EMPLOYEES**

Supreme Court of New Mexico



Effective July 1, 2019

**1
PART 1**

**New Mexico Judicial Branch Personnel Rules Part 1
For Career or Classified Employees**

[NOTE: Definitions for both Part I (Career or Classified Employees) and Part II (At-Will Employees) begin on page 63; italicized words are defined.]

Adopted February 1, 2005
Amended August 1, 2010
Amended July 1, 2014
Amended July 1, 2019

**NEW MEXICO JUDICIAL BRANCH PERSONNEL RULES
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Inquiries about the

New Mexico Judicial Branch Personnel Rules - Part I for Employees

New Mexico Judicial Branch Personnel Rules – Part II for At-Will Employees

Adopted by New Mexico Supreme Court Order 10-8500

Effective July 1, 2019

General Personnel Policies and Procedures

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Please note that this document has a glossary beginning at page 66.
When you see a word in italics, that word and its definition will be found in the
glossary.

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SECTION 1. GENERAL PROVISIONS AND PURPOSE

1.01 PURPOSE

To create a system of human resource management for *employees*. An *employee* is a person who holds a *permanent* or *term position* within the *Judicial Branch*, excluding a justice, judge, or *at-will employee*. Also known as a *classified* or *career status employee*. See also *benefited temporary employee* and *non-benefited temporary employee*. (Amended 08/01/10; 07/01/19)

1.02 CITATION

The rules in this part shall be known as the New Mexico *Judicial Branch* Personnel Rules - Part I (*Employees*) and are to be cited as *NMJBPR*. (Amended 08/01/10)

1.03 SUPPLEMENTATION OF THE RULES

The *NMJBPR* shall be supplemented by general policies and procedures that may be reviewed by the *NMJBPR Committee* and shall be approved by the *Director*. These rules may be subject to interpretative memoranda issued by the *Director*. No policies, procedures, or interpretative memoranda shall be contrary to these rules. A complete set of all policies, procedures, and interpretative memoranda shall be maintained by the *AOC HRD*, are available on the *nmcourts.gov* website, and shall be made available to all *employees*.

Proposed revisions to the *NMJBPR* or policies may be submitted to the *AOC HRD Director* and the *NMJBPR Chairperson*.

The *Director* in consultation with the Chief Justice may adopt, amend, or repeal temporarily, and based on a particular set of circumstances a *NMJBPR*, personnel policy or procedure without a comment period or formal submission to the Supreme Court when it is in the best interest of the *NMJB*. (Added 07/01/19)

1.04 SUPREME COURT AUTHORITY

The Supreme Court of the State of New Mexico is the superintending authority for the *Judicial Branch*. The *NMJBPR* are adopted, amended, or repealed at the discretion of the Supreme Court.

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1.05 DISCRIMINATION, RETALIATION AND HARASSMENT

(Ref: Harassment (Including Sexual Harassment) Discrimination and Retaliation Policy, Harassment (Including Sexual), Discrimination and Retaliation Complaint Form, and Supreme Court Order 06-8500)

- A. *Discrimination or harassment* based on race, color, religion, sex, age, national origin, ancestry, physical or mental handicap, serious medical condition, sexual orientation, gender identity, socioeconomic status, political affiliation or any other reason not related to work performance shall not be tolerated in the *work place*; nor shall *retaliation* against a person filing a *complaint*, participating in an investigation or reporting such *discrimination* or *harassment* be tolerated, even if there are no findings. (Amended 07/01/19)
- B. *Discrimination, retaliation, and harassment* are unacceptable and are grounds for *disciplinary action* up to and including *termination*. (Amended 07/01/19)
- C. An *employee* who is aware of or who is the subject of *discrimination, retaliation, or harassment* shall immediately report such action. (Amended 08/01/10; Amended 07/01/19)

1.06 NMJBPR COMMITTEE

The *NMJBPR Committee* shall make recommendations regarding the adoption and revision of the *NMJBPR*. (Added 08/01/10)

A. Composition and Appointment

Upon the recommendation of the chairperson and the *Director*, the Supreme Court shall appoint nine (9) members from the *Judicial Branch*. Such appointments shall provide for a broad representation of both court type and geographic location.

B. Term and Reappointment

- (1) Each member shall be appointed for a three (3) year term.
- (2) A member may be appointed for one (1) additional three (3) year term.

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- (3) A member may serve no more than two (2) successive terms plus the period of any unexpired term for which the member was appointed.
- (4) If any committee member is absent from three (3) consecutive committee meetings, that person is deemed to have resigned from the committee. (Added 08/01/10)

C. Chairperson and Vice Chairperson

The Supreme Court shall designate the chairperson and vice chairperson from the appointed members.

D. Meetings

- (1) Committee deliberations shall be conducted in a *closed session*. (Added 07/01/19)
- (2) The committee shall meet at the call of the chairperson. The *AOC HRD* Director shall give notice of a meeting along with the agenda to each member and all persons employed by the *Judicial Branch* at least five (5) *business days* in advance. The comment period shall be open to any person who is employed by the *Judicial Branch*. (Amended 07/01/19)
- (3) A majority of the members constitutes the quorum necessary to take action at a meeting.
- (4) The chairperson shall be entitled to vote on any matter.
- (5) A member may attend a meeting and vote in person or by teleconference. A member may not vote through a proxy.
- (6) Each member shall be provided with an agenda, the previous meeting's minutes, and copies of any materials to be considered at least five (5) *business days* before the meeting. (Amended 07/01/19)
- (7) The proceedings shall be recorded, minutes shall be prepared, and adopted minutes shall be available from the *AOC HRD*. (Amended 08/01/10)

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1.07 PROCESS

A. Recommended Actions

The committee may make recommendations to the *Director* to adopt, amend, or repeal the *NMJBPR* and any associated personnel policy and procedure. (Amended 08/01/10)

B. Policy and Procedure

The *Director* may adopt, amend, or repeal any personnel policy and procedure without a comment period or submission to the Supreme Court. (Added 08/01/10)

C. Comment Period - NMJBPR

- (1) Before submitting any recommended action to the *Director* regarding modification of *NMJBPR*, the committee shall circulate the recommended action within the *Judicial Branch* for a thirty (30) calendar day comment period. (Amended 08/01/10)
- (2) The recommended action may include a statement of rationale.
- (3) Any person employed by the *Judicial Branch* may submit comments to the committee within the thirty (30) calendar day comment period.

D. Submission to the Supreme Court

- (1) After the comment period, the committee and the *Director* shall consider all comments received.
- (2) The *Director* may submit the recommended action to the Supreme Court with or without modification, or may withdraw the recommended action.
- (3) For any recommended action submitted to the Supreme Court, the *Director* shall include a statement of rationale and a digest of the comments received.

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E. Action by the Supreme Court

- (1) The Supreme Court may exercise its discretion by accepting or rejecting the *Director's* recommended action. (Amended 07/01/19)
- (2) Any accepted recommended action shall be filed in the Office of the Clerk of the Supreme Court. The *AOC HRD* shall distribute copies to each *Administrative Authority*.
- (3) An accepted recommended action shall become effective as ordered by the Supreme Court.

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SECTION 2. CLASSIFICATION

(Ref: Classification Policy)

2.01 PURPOSE

To establish and administer a uniform *classification* system; ensure *job* descriptions accurately describe duties and establish appropriate qualifications; and evaluate *job* worth based upon the Supreme Court adopted methodology of *job measurement*.

2.02 CLASSIFICATION PLAN

- A. The *Director* shall establish, maintain, and administer a *Classification Plan* for all positions throughout the *Judicial Branch*. (Amended 08/01/10)
- B. The *Classification Plan*, effective July 1, shall be distributed to *Judicial Branch* entities no later than September 15th of each fiscal year. Changes to the *Classification Plan* shall be distributed when they occur. (Amended 07/01/19)

2.03 JOB CLASSIFICATION AND MEASUREMENT

- A. The *AOC HRD Director* shall make recommendations to the *Director* regarding the *job measurements* on all existing job classifications. (Amended 08/01/10; 07/01/14; 07/01/19)
- B. The *AOC HRD Director* shall create a *job* description for newly proposed classifications, and conduct a *classification study* if applicable. (Added 07/01/14; Amended 07/01/19)
- C. Any pay increase associated with *compensation restoration* may be suspended by the Supreme Court due to budget constraints in which case any change in compensation shall become effective prospectively within twenty-four (24) months of the adopted new *job measurement*. (Amended 08/01/10; 07/01/19)

2.04 CLASSIFICATION STUDIES

The *AOC HRD Director* shall conduct *classification studies* in accordance with the Classification Policy. (Amended 08/01/10)

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2.05 POSITION RECLASSIFICATION

A. Vacant Position

- (1) The *Administrative Authority* may initiate a request for position *reclassification* for a vacant position by submitting a *written* justification and if applicable an organizational chart. (Added 08/01/10; Amended 07/01/14)
- (2) The *AOC HRD Director* may approve a position *reclassification* when the *job* content assigned to a position has substantially changed, the *reclassification* is appropriate within the *judicial entity's* organizational structure, and when funds are available. (Amended 08/01/10)

B. Filled Position (Added 08/01/10)

- (1) The *Administrative Authority* may initiate a request for position *reclassification* on behalf of an *employee* by submitting an approved Job Analysis Questionnaire completed by the *employee* along with the *employee's* updated *job* application and, if applicable, an organizational chart. (Amended 07/01/14)
- (2) The *AOC HRD Director* may approve a position *reclassification* when the *job* content assigned has substantially changed, the *reclassification* is appropriate within the *judicial entity's* organizational structure, funds are available, and the *employee* meets the minimum qualifications of the *job*.

C. The *AOC HRD Director* shall provide written approval to the *employee* and/or *Administrative Authority* approving or disapproving the position *reclassification* and, if approved, include the effective date of the position's *reclassification*. (Amended 08/01/10; 07/01/19)

D. Any change in compensation resulting from a *reclassification* shall be in accordance with *NMJBPR* Sections 3.02 E. & F.; and Sections 3.03 E. & F. (Amended 08/01/10; 07/01/19)

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2.06 APPEALS

A. Reclassification (Amended 08/01/10)

Disapproval of a *reclassification* may be appealed to the *Director* within ten (10) *business days* of the initial determination by the *AOC HRD Director*.

- (1) The written appeal shall state the grounds for reconsideration.
- (2) The *Director* shall render a final decision within twenty (20) *business days* of receipt.
- (3) The *Director's* decision is final.

B. Job Measurement (Added 08/01/10)

There is no appeal for any *job measurement* and corresponding *pay range* assignment made by the *Director*.

C. Job Classification Study Implementation (Added 08/01/10)

Job classification assignments associated with movement to a revised or new *job classification* upon implementation of a *classification study* may be appealed to the *Director* in *writing* within ten (10) *business days* of the initial determination of the *Administrative Authority*.

- (1) The *written* appeal shall state the grounds for reconsideration.
- (2) The *Director* shall render a final decision within twenty (20) *business days* of receipt.
- (3) The *Director's* decision is final.

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SECTION 3. COMPENSATION

3.01 PURPOSE

To pay, motivate, and manage *employees* through a comprehensive system of compensation.

3.02 PAY

- A.** No *employee* shall be paid for hours not worked, unless on approved leave, or *stand-by* status. (Added 08/01/10)
- B.** An *employee* shall report time and be compensated in compliance with the *FLSA* and *NMSA* 1978, Section 30-23-2 (1963). (Amended 08/01/10)
- C.** *Employees* shall accurately record their time in *SHARE*. (Added 07/01/19)
- D.** *Employees* are responsible for verifying they are paid appropriately for the hours worked or not worked. (Added 07/01/1907/01/19)
- E.** Pay should reflect appropriate placement within the assigned *pay range*, with consideration of the *employee's* competency, demonstrated performance, and budget availability. (Amended 08/01/10)
- F.** No *employee* shall be paid less than the minimum of the *classification's pay range* or *alternative pay range*. (Amended 08/01/10)
- G.** No *employee* shall be paid more than the maximum of the *classification's pay range* or *alternative pay range*, except as a result of a downward *pay range* or *job measurement* adjustment. (Amended 08/01/10; 07/01/19)
- H.** If an *employee's base pay rate* is above the maximum of the range, it shall become frozen until the rate falls within the assigned *pay range*. (Amended 07/01/19)
- I.** An *employee* at the maximum of the assigned *pay range* may receive lump sum payments if eligible for legislatively mandated salary increases. Disbursements will be made as specified in the compensation initiative's Supreme Court Order for the fiscal year legislatively approved, and so long as the employee is an employee with the Judiciary. Should the employee

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transfer from one *judicial entity* to another, the gaining entity will assume paying the disbursement.

- J.** Pay increases shall be funded from balances remaining in the *judicial entity's* current appropriation, and there shall be no request for deficiency or supplemental appropriation or for emergency funding from the State Board of Finance to fund a pay increase.

3.03 PAY SYSTEM

A. Demotion

The *Administrative Authority* shall decrease the *employee's base pay rate* upon *demotion*. The *pay rate* reduction will be no less than 5% and no more than 15%; provided however, a greater than 15% reduction may be necessary to follow *NMJBPR* Section 3.02, in which case the *employee's new base pay rate* will be the maximum of the new assigned *pay range*. (Added 08/01/10; amended 07/01/19)

B. Emergency Retention Pay Action (Added 08/01/10)

- (1) The *Administrative Authority* may recommend to the *Director* an emergency retention pay increase for an *employee* who has been employed with the *Judicial Branch* at least two (2) years, based upon the following criteria:
- a. A receipt of a verifiable outside employment *job* offer with a higher *pay rate* to the *employee* from an entity outside the *Judicial Branch*.
 - b. Foreseeable *recruitment* difficulties related to the required work.
 - c. Supporting documentation shall include:
 - 1. an explanation of why the *employee* is critical to the *judicial entity*, and
 - 2. the *employee's* last two (2) performance evaluations indicating the *employee* has demonstrated exceptional performance.

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- (2) The *base pay rate* increase approved by the *Director* may not exceed 15% of the *employee's current pay rate* nor exceed the maximum of the *employee's assigned pay range*. (Amended 07/01/19)
 - a. The *Director* shall issue a letter to the *Administrative Authority* approving or disapproving the emergency retention increase. If the recommendation is approved, the effective date shall be no later than the first *pay period* following the *Director's* approval.

C. Initial Hire

The *Administrative Authority* may hire an *employee* at a *pay rate* up to 100% of the *pay range*, without approval of the *Director*, based upon

- (1) the qualifications of the applicant;
- (2) internal comparability with other *employees* in the same *classification*; or
- (3) *recruitment* and retention issues.

D. Lateral Transfer

An *employee's* transfer from one position to another position with the same assigned *pay range* within the *Judicial Branch* shall not result in a *pay rate* change, unless approved by the *Director* to maintain *salary alignment*. (Amended 08/01/10; 07/01/14)

E. Promotion

- (1) The *Administrative Authority* shall increase the *employee's base pay rate* upon *promotion*. (Amended 07/01/19)
- (2) The *base pay rate* increase may be up to 100% of the new *pay range* or an increase of up to 15% of the *employee's current base pay rate* without approval of the *Director*. (Amended 07/01/19)

F. Reclassification

- (1) Any change in compensation as a result of a *reclassification* resulting in movement to a higher *pay range* shall become effective no later

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than the first *pay period* following the effective date of the position's *reclassification*; unless the *Director* has suspended operation of this rule due to budget constraints. In which case, any change in compensation shall become effective prospectively within twenty-four (24) months of the *reclassification*. (Amended 08/01/10)

- (2) A *reclassification* resulting in movement to a lower *pay range* shall not result in a loss of compensation unless the hourly rate of pay exceeds the maximum of the assigned *pay range*.
- (3) A *reclassification* resulting in movement to a higher *pay range* shall be governed by *NMJBPR* Section 3.03 (B).

G. State Board or Commission Membership (Added 08/01/10)

An *employee* who is a member of a state board or commission may, with the approval of the *Administrative Authority*, attend meetings or transact business of the board or commission during *regularly scheduled work hours* and be paid for regular work hours, provided the service does not hamper the performance of the *employee's* required duties.

H. Temporary Salary Increase or Temporary Promotion Increase

(Added 08/01/10; Amended 07/01/14; 07/01/19)

The *Administrative Authority* may grant an *employee* a *temporary salary increase* or *temporary promotion*.

- (1) A *temporary salary increase* or *temporary promotion* shall:
 - a. not be for less than thirty (30) consecutive calendar days; and
 - b. not extend beyond the time such temporary condition ceases; or not be for more than twelve (12) consecutive months.
- (2) A *temporary salary increase* or *temporary promotion* is limited to use for a vacant or an *effectively vacant* position.
- (3) A *temporary salary increase* or *temporary promotion* may be awarded only to an *employee* who is temporarily performing higher-level *job* duties that are assigned to a *job classification* with a higher *pay range*.

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- (4) The *Administrative Authority* may increase an *employee's* pay rate up to 100% of the new pay range or up to 15% of the *employee's base pay rate* without approval from the *Director*. (Amended 07/01/19)
- (5) At the conclusion of the *temporary salary increase or temporary promotion*, the *employee's pay rate* shall revert to the previous *pay rate* plus any pay increases the *employee* would have received during the period of *temporary salary increase or temporary promotion*.
- (6) The *employment status* of the individual receiving a *temporary salary increase or temporary promotion* shall remain the same.

I. Voluntary Classification Reduction (Amended 08/01/10; 07/01/19)

The *Administrative Authority* shall decrease the *employee's base pay rate* upon *voluntary classification reduction*. The *pay rate* decrease:

- (1) shall be at least 5% of the *employee's base pay rate*;
- (2) shall not be more than 15% less than the *employee's base pay rate*; unless the assigned *pay range* of the new *job classification* has a maximum *pay rate* that is more than 15% below the *employee's base pay rate*.

3.04 OVERTIME, HOLIDAY, SHIFT DIFFERENTIAL, ON-CALL AND STAND-BY PAY

(Ref: Overtime, Holiday, Shift Differential and On-Call/Stand-By Pay Policy)

A. Overtime Pay Including Compensatory Time (Amended 07/01/14)

- (1) A federal *Fair Labor Standards Act (FLSA) non-exempt employee* is subject to the *overtime* provisions of the *FLSA* and must be compensated (payment or *compensatory time*) for all *time worked* over forty (40) hours in a designated *work week* at the *premium overtime* (time and one-half) rate of pay. (Amended 08/01/10; 07/01/14)
 - a. In addition to a *non-exempt employee's* regular scheduled work hours, *time worked* includes:
 - 1. training and workshop time,

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2. travel time required by management, and
 3. voting time. (Added 07/01/14)
- (2) An *FLSA non-exempt employee* who has *non-worked paid time* in excess of forty (40) hours in a designated *work week* will be compensated (payment or *compensatory time*) for the extra hours at *straight time*. (Amended 08/01/10; 07/01/14)
- b. *Non-worked paid time* includes:
1. accrued leave, (i.e., annual, sick, etc.),
 2. *administrative leave*, jury duty,
 3. approved *holidays*, and
 4. any other *non-worked paid time* reported by an *FLSA non-exempt employee* in excess of forty (40) hours. (Added 07/01/14)
- (3) *Overtime* or any extra hours worked must be approved by the *Administrative Authority* prior to *overtime* being worked. (Amended 08/01/10)
- (4) Upon transfer to another *judicial entity*, *compensatory time* accrued by an *FLSA non-exempt employee* may be accepted by the *Administrative Authority*, and if it is not accepted, the time shall be paid out prior to the transfer. (Added 08/01/10; Amended 07/01/19)
- (5) An *FLSA exempt employee* who, with prior approval works beyond eighty (80) hours in a *pay period* may be compensated at *straight time* worked including *non-worked paid time*. At the discretion of the *Administrative Authority*, compensation shall be made with the accrual of either *compensatory time* or monetary compensation. (Amended 08/01/10; 07/01/14; 07/01/19)
- (6) *Administrative compensatory time* may be earned by an *FLSA exempt employee* in accordance with the *NMJBPR* Section 5.03; with an *Administrative Authority's* written justification of statewide or

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judiciary wide impact, and the *Director's* approval. (Added 07/01/14)

- (7) Upon separation from the *Judicial Branch*, *FLSA exempt employees* who have *administrative compensatory time* or *compensatory time* accrued at the time of separation shall not be compensated for that time, unless it was accrued and earned while the *employee* was *FLSA non-exempt*. (Amended 08/01/10; 07/01/14; 07/01/19)
- (2) Upon transfer or *promotion* from an *FLSA non-exempt* position to an *FLSA exempt* position *employees* may be required to use or be paid out all or part of their premium bank *compensatory time* balance. (Added 07/01/19)
- (3) Upon transfer to another *judicial entity*, *administrative compensatory time* or *compensatory time* accrued by an *FLSA exempt employee* may be accepted by the *Administrative Authority*. (Added 08/01/10; Amended 07/01/14)
- (10) An *employee* shall not have a balance of more than eighty (80) hours of *compensatory time* or *administrative compensatory time* at the end of the calendar year; however, when special circumstances arise, the *Administrative Authority* may extend the eighty (80) hour limit. (Amended 08/01/10)
- (11) At the discretion of the *Administrative Authority*, compensation shall be made with monetary compensation or *compensatory time*. (Amended 08/01/10)
- (12) Any monetary compensation is subject to budget availability and shall be consistent with the Overtime, Holiday, Shift Differential and On-Call/Standby Pay Policy. (Amended 08/01/10).

B. Holiday Pay

- (1) An *employee* (including a *benefited temporary employee* or *non-benefited temporary employee*) who works on a *designated holiday* shall be compensated at the *holiday premium pay* rate of double time and one-half. Double time and one-half equates to regular pay for *holiday* compensation, plus time and one-half. (Amended 07/01/19)

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- (2) Compensation will be in the form of *holiday premium compensatory time* unless *employee* and management agree in advance otherwise. (Amended 08/01/10; 07/01/19)
- (3) *Administrative Authority* approval must be given prior to an *employee* working on a *designated holiday*. (Added 07/01/19)
- (4) When a *designated holiday* falls on an *employee's* regularly scheduled work day and the *employee* is not required to work, the *employee* shall be paid the *employee's* hourly rate for the number of hours the *employee* would have normally worked, up to a maximum of eight (8) hours per day. *Employees* working alternative work schedules must revert back to a regular *work week* of five (5) days a week, eight (8) hours a day in the week in which a *designated holiday* falls. (Added 07/01/14)
- (5) *Part-time employees* whose work schedule includes the day a *designated holiday* is observed will be compensated for the number of hours the *part-time employee* would normally have worked on that day. *Part-time employees* whose normal work schedule does not include the day a *designated holiday* is observed will not be compensated for the *holiday*. (Added 07/01/14)
- (6) An *employee* shall receive *holiday pay* on *designated holidays* that the *employee* does not work provided the *employee* is in a pay status for no less than one hour, for both the *employee's* last scheduled workday before the *holiday* and the *employee's* first scheduled workday after the *holiday*. (Amended 07/01/14)
- (7) An *employee* shall not receive *holiday premium pay* and *overtime pay* for the same hours worked on a *designated holiday*.
- (8) An *employee* who works a designated shift between the hours of 6:00 p.m. and 7:00 a.m. on a *designated holiday* shall receive *holiday premium pay* and *shift differential pay* for the same hours worked on a *holiday*. (Added 08/01/10)
- (9) An *employee* who separates from service shall not be compensated for *holiday compensatory time* unless the *holiday* worked is a requirement of their *job*. (This applies primarily to 24/7 operations.) (Added 07/01/19)

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C. Shift Differential Pay

- (1) An *employee* assigned to work a scheduled shift at the request of the *Administrative Authority* between the hours of 6:00 p.m. and 7:00 a.m. and who actually works during this timeframe, shall receive *shift differential pay*. (Amended 08/01/10; 07/01/19)
- (2) An *employee* who requests and is approved to work a schedule between the hours of 6:00 p.m. and 7:00 a.m., but the shift is not a requirement of the *job* shall not receive *shift differential pay*. (Added 07/01/19)
- (3) All *employees* eligible for *shift differential pay* within a *judicial entity* shall be paid the same *shift differential pay* rate. (Added 08/01/10)
- (4) *Shift differential pay* shall be no more than \$1.20 per hour in addition to the regular rate of pay for the hours worked between 6:00 p.m. and 7:00 a.m. and shall be at the discretion of the *Administrative Authority*. (Added 08/01/10; Amended 07/01/14; 07/01/19)
- (5) If an *employee*, who is receiving *shift differential pay*, separates employment, the *employee's compensatory time* (if they accrued the time as a non-exempt and if applicable) shall be included in the buy back. (Added 07/01/19)

D. Stand-By Pay
(Ref: Stand-By Policy)

Employees may receive a designated amount of pay for every hour of *stand-by* pay consistent with the Stand-By Policy.

3.05 NO COMPENSATION DURING LEAVE WITHOUT PAY

In accordance with *NMJBPR* Section 5.13, *Leave Without Pay*, an *employee* on authorized or unauthorized *leave without pay* shall not be compensated, and may experience changes to benefit coverage, leave accruals, and PERA credit.

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**3.06 PERFORMANCE AND COST OF LIVING COMPENSATION
ADJUSTMENT**

Performance and cost of living compensation adjustments shall be governed by the legislation creating and authorizing them.

3.07 OUT-OF-CYCLE COMPENSATION INCREASE

(Ref: Out-of-Cycle Increase Guidelines, Criteria and Form Instructions and Supreme Court Order 05-8500)

- A. The *Administrative Authority* may recommend to the *Director* an out-of-cycle increase, consistent with the Out-of-Cycle Increase Guidelines, based upon the following criteria: (Amended 07/01/19)
 - (1) demonstrated exceptional performance; or
 - (2) *salary alignment*.
- B. The *Director* shall make a determination and issue a letter of explanation to the *Administrative Authority* approving or disapproving the out-of-cycle increase within thirty (30) days of receipt of request to *AOC HRD*. If the recommendation is approved, the effective date shall be no later than the first *pay period* following the *Director's* approval. The thirty (30) days are automatically suspended each year during the legislative session and two weeks immediately prior to the start of the legislative session. (Amended 07/01/19)

3.08 MARKET ADJUSTMENT

(Ref: Market Adjustment Policy)

- A. An *Administrative Authority* may request the *Director* to conduct a *market review* of the competitive *pay rates* for a *classification* series within a geographic location or specific market to address critical *recruitment* and retention problems.
- B. Based upon the *market review*, the *Director* may recommend to the Supreme Court assignment of *alternative pay ranges*.
- C. The *pay rate* for positions within the geographic location or specific market may be adjusted to an *alternative pay range* to meet competition and to remedy *recruitment* and retention problems.

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- D.** An *alternative pay range* assignment shall be for no more than a two (2) year duration. The adjustment may be extended thereafter in two (2) year increments with updated and supporting *market review* data.

3.09 COMPENSATION INCREASE FOR CERTIFIED BILINGUAL COMMUNICATION EMPLOYEES (Added 08/01/10)

- A.** The *Administrative Authority* may approve an *employee's* advance request to have the *employee's* bilingual certification recognized for additional pay.
- B.** A *written* request to the *Administrative Authority* seeking such additional pay shall be provided before the *employee* begins the certification process.
- C.** The approval or disapproval of the *Administrative Authority* is only in regard to additional pay upon certification completion, not the *employee's* ability to seek certification unless such is funded by the *judicial entity*.
- D.** To be considered for a certified bilingual compensation increase, an *employee* must be a certified bilingual *employee*. A certified bilingual *employee* is an *employee* who meets each of the following requirements:
- (1)** The *employee* successfully completes the New Mexico Center for Language Access bilingual communication program, obtaining certification of successful completion.
 - (2)** The *employee* keeps the *employee's* bilingual communication certification current, including compliance with any continuing education requirements required by the New Mexico Center for Language Access.
- E.** A certified bilingual *employee* shall be given an increase of \$1.00 per hour as a *multiple component of pay* in addition to an *employee's* regular hourly rate of pay. This increase shall be in addition to the *employee's base pay*. (Amended 07/01/14; 07/01/19)
- (1)** The increased compensation required for a certified bilingual *employee* shall be funded within the *judicial entity's* appropriation, and there will be no request for a deficiency or supplemental appropriation or for emergency funding from the State Board of Finance to implement and maintain the compensation increase.

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- (2) The *Administrative Authority* shall annually determine whether the *employee's* bilingual communication certification is current and, if not, shall reduce the *employee's* pay by \$1.00 per hour until such time as the *employee's* bilingual communication certification becomes current, at which time the additional compensation of \$1.00 per hour shall be reinstated. (Amended 07/01/19)
- (3) The *Administrative Authority* within the *judicial entity* in which the *employee* is employed shall determine upon an *employee's* job transfer, *promotion* or *demotion*, whether the *employee's* bilingual communication certification is required and, if it is not, shall reduce the *employee's* pay by the *multiple component of pay* \$1.00 per hour immediately before any *job* change transpires. (Amended 07/01/14; 07/01/19)
- (4) If an *employee*, who is receiving a compensation increase for certified bilingual communication separates employment, the *employee's* *compensatory time* (if they accrued the time as a non-exempt and if applicable) shall be included in the buy back. [Note: compensation for annual leave payout upon separation shall not include the bilingual pay – see 5.A.7] (Added 07/01/19)

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SECTION 4. RECRUITMENT, SELECTION AND APPOINTMENT

4.01 PURPOSE

To establish a system for the *recruitment*, selection and *appointment* to a *permanent position* or *term position* in the *Judicial Branch*.

4.02 EQUAL EMPLOYMENT OPPORTUNITY

- A. The Judicial Branch is an Equal Employment Opportunity employer. (Added 07/01/19)
- B. Advertisements and *job postings* of employment opportunities shall contain a statement that the *Judicial Branch* is an Equal Employment Opportunity Employer.
- C. All decisions and procedures regarding *recruitment*, selection, *promotion* and other terms and conditions of employment shall be made without *discrimination* on the basis of race, color, religion, sex, age, national origin, ancestry, physical or mental handicap, disability, serious medical condition, sexual orientation, gender identity, socioeconomic status or political affiliation, and shall be in compliance with equal employment laws, the Americans with Disabilities Act, and all other applicable federal and state laws. (42 U.S.C.A. §§12101) (Amended 07/01/19)

4.03 RECRUITMENT OF PERSONNEL

- A. *Recruitment* for *permanent positions* and *term positions* shall be open. *Open recruitment* efforts may be city, state or nationwide. (Amended 08/01/10)
- B. *Recruitment* for a position may begin upon receipt of the *employee's resignation* or the date the position is vacated, whichever occurs first.
- C. The *Director* may approve a position's *double-fill* upon appropriate justification (i.e., current incumbent's *resignation* letter), for a period not to exceed six-months. (Added 07/01/14)
- D. At a minimum, *job postings* shall be: (Amended 08/01/10; 07/01/14)
 - (1) for five (5) *business days*,
 - (2) on the New Mexico *Judicial Branch* Web page (internal or external), and

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- (3) in at least one (1) public place within the recruiting judicial facility.
- E. Applications for employment received from a *job posting* may be used for up to 120 days from the date the *recruitment* ended. (Added 07/01/14)
- F. Applications for employment received from a previous *recruitment* may be used for other positions with the same *classification*, *position status*, and geographical location for up to 120 days from the date the previous *recruitment* ended. (Amended 08/01/10; 07/01/14)
- G. The *AOC HRD Director* may approve the use of a previous *recruitment* to fill a vacant position of the same *job* classification, regardless of *position status* without advertisement. (Added 07/01/19)
- H. The *AOC Director* may approve the use of a previous *recruitment* to fill a vacant position of a different *job* classification without advertisement. (Added 07/01/19)

4.04 APPLICATION PROCESS

- A. An applicant shall, within the time specified in the *job posting*:
 - (1) submit a completed *Judicial Branch* Application for Employment form to the person specified on the *job posting*, and
 - (2) include copies of licenses, registrations, certifications, proof of education or other information as required in the *job posting*. (Amended 07/01/19)
- B. An application shall be rejected if: (Amended 07/01/19)
 - (1) the application is not on the required form or is incomplete,
 - (2) the application does not include copies of all information requested in the *job posting*,
 - (3) the application is not submitted timely,
 - (4) the applicant does not meet the minimum qualifications,
 - (5) the applicant has provided false statements or documentation, or

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- (6) the applicant is in violation of the Criminal Offender Employment Act (*NMSA* 1978, Section 28-2-1 to 28-2-6, 1974, as amended through 2010).
- C. The *Administrative Authority* may approve a rejected application for interview purposes.
- D. The *Director* may approve the hiring of an incumbent whose application was rejected, but who the *Administrative Authority* approved to be interviewed, with appropriate justification from the *Administrative Authority*. (Added 07/01/14)
- E. Voluntary information on gender, ethnicity, and age of an applicant shall be utilized only for affirmative action and other nondiscriminatory purposes.

4.05 INTERVIEW PROCESS

Interviews for selected applicants shall be conducted in accordance with the Interview Policy.

4.06 NEPOTISM (Amended 08/01/10)

- A. No person shall be appointed, transferred, or promoted to a position and no *employee* shall hold a position in a *judicial entity* if that person or *employee* will be within the chain of *supervision* of a *family member*, *household member*, or *domestic partner*.
- B. No person shall be appointed to a position and no *employee* shall hold a position in a *judicial entity* in which a *family member*, *household member* or *domestic partner* is an elected or appointed judge or justice.
- C. No person shall be appointed to a position or hold a position in the Supreme Court, *AOC*, *Compilation Commission*, *Building Commission*, or *Law Library* when a *family member*, *household member*, or *domestic partner* is a Supreme Court Justice.
- D. If an *employee* is in one of the above prohibited positions, every effort will be made by the *Administrative Authority* to transfer the affected *employee* to a comparable position for which the *employee* qualifies within the *Judicial Branch*. If a like position is not available, then the affected *employee* shall resign or be terminated.

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4.07 SELECTION

A. Selection

- (1) An *employee* shall be selected based on ability, experience, knowledge, and skill levels best matched to the position. The job related qualification standards (education, experience, licensures), as outlined in the job description must be met.

B. Hiring

- (1) The *hiring authority* shall make a recommendation to the *Administrative Authority* after confirming the employee has met the key required skills and meets or exceeds the job related qualification standards of the position.

- (2) The *Administrative Authority* may:

- a. request additional information before making a final decision,
- b. accept the recommendation,
- c. reject the recommendation and request additional interviews be made from the current group of candidates, or
- d. request a new *recruitment* be initiated.

- C.** Before an offer of employment is extended, reference checks shall be completed and documented on the selected applicant(s).

- D.** Background and credit checks may be conducted at the discretion of the *Administrative Authority*. It is recommended that a signed release be received from the selected applicant(s) prior to the background and credit checks being done. (Amended 07/01/14)

4.08 APPOINTMENT

- A.** Once an applicant is selected, the hiring authority shall contact the selected applicant to determine whether the applicant is interested in the *job* and the applicant's availability for employment. Any *job* offer shall be subject to the terms specified in the offer letter.

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- B.** If the selected applicant indicates an interest in the position, the hiring authority shall make an offer of employment by a standard form letter provided by the *AOC HRD* or *judicial entity*.
- C.** Within a reasonable length of time, the hiring authority shall notify the remaining applicants that the position has been filled.

4.09 RIGHTS AND STATUS OF NEW MEXICO JUDICIAL BRANCH EMPLOYEES (Amended 08/01/10)

- A.** An *employee* appointed to a *permanent position* shall have all the rights and benefits for that *position* as indicated on the Rights and Status of New Mexico *Judicial Branch Employee Chart*.
- B.** An *employee* appointed to a *term position* shall have all the rights and benefits for that position as indicated on the Rights and Status of New Mexico *Judicial Branch Employee Chart* except:
 - (1) when limited by funding source,
 - (2) when the *appointment* expires due to a reduction or loss of funding, or
 - (3) when the special project ends, with at least fourteen (14) calendar days *written notice*, in which case, the *term employee* shall have no rights under *NMJBPR* Section 10, Grievance.

4.10 PROBATION

- A.** A *probationary period* of one (1) year of continuous employment without a *break in service* is required of an *employee* appointed to a *permanent position* or *term position*. The one (1) year *probationary period* may not be extended, except as provided in 4.10(C) below. (Amended 08/01/10; 07/01/14)
- B.** Calculation of the *probationary period* shall include all continuous employment in a *permanent position* or *term position*, (Amended 08/01/10) regardless of *job* classification within the *Judicial Branch*. (Amended 08/01/10)
- C.** Except for military leave or leave taken under the FMLA, continuous leave with or without pay in excess of thirty (30) calendar days shall not be counted as *time worked* in calculating probationary time. (Amended 08/01/10)

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- D.** During the *probationary period*, the *employee* may be terminated without advance notice and shall have no rights to grieve the *termination*. (Amended 08/01/10)
- E.** There shall be no additional *probationary period* upon transfer or *promotion* from one *judicial entity* to another. (Added 08/01/10)
- F.** Any *time worked* as an *at-will employee* shall not be counted towards calculating the *probationary period*. (Added 08/01/10)

4.11 POST OF DUTY (Added 08/01/10; amended 07/01/19)
(Ref: Supreme Court Order 05-8200)

- A.** An *employee's* assigned post of duty shall be indicated in the employment offer letter.
- B.** When it is in the best interest of the *judicial entity*, the *Administrative Authority* may transfer an *employee* from one physical location to another;
 - (1)** when a willingness to accept a change in geographic location was made as a condition of employment; or
 - (2)** without the consent of the *employee*, if the location is within thirty-five (35) miles from the original assigned post of duty; or
 - (3)** only with the *written* consent of the *employee*, if the location is more than 35 miles from the original assigned post of duty.
 - (4)** The *employee* should be notified in writing a minimum of ten (10) working days prior to the effective date of the change in post of duty. (Added 07/01/19)

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SECTION 5. LEAVE AND HOLIDAYS

5.01 PURPOSE

To establish the procedure for accruing, accumulating and using leave.

5.02 ABSENCE WITHOUT LEAVE (Added 07/01/14)

- A. *Employees* who fail to appear for work without authorized leave or who appear for work but are in violation of policies governing the *employee's* readiness for work shall be considered to be *absent without leave*. *Employees* shall not be paid for any periods of *absence without leave* and shall not accrue annual or sick leave.
- B. *Absence without leave* is *just cause* for, and may result in *disciplinary action* up to and including *termination*.

5.03 ADMINISTRATIVE LEAVE

(Ref: Leave Policy; and Inclement Weather Policy)

- A. The Chief Justice may authorize *administrative leave* with pay for any period.
- B. An *Administrative Authority* may authorize an *employee administrative leave* with pay:
 - (1) for a period not to exceed ten (10) *business days* per calendar year when it is in the best interest of the *Judicial Branch* to do so, and
 - (2) for a period not to exceed twenty-five (25) *business days* for disciplinary purposes as per *NMJBPR* Section 9.06.
- C. The *administrative leave* that is granted by the Chief Justice without a specific day and time, such as for fairs and fiestas, must be pre-approved by the *employee's* immediate supervisor prior to being taken. (Added 08/01/10)
- D. An *Administrative Authority* may not authorize *administrative leave* to supplement *holiday* leave or *administrative leave* granted by the Chief Justice. (Added 08/01/10)
- E. An *Administrative Authority* may grant up to eighty (80) hours of *administrative leave* in a calendar year for an *employee* to participate in an

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employee assistance program, counseling, or drug or *alcohol* rehabilitation program. (Added 08/01/10)

- F. The *Director* may authorize *administrative compensatory time*, and *administrative compensatory time buy-back* to *employees* whose *Administrative Authority* provides justification of his or her extraordinary efforts which have had a statewide or judicial wide positive impact. (Added 07/01/14)

5.04 ANNUAL LEAVE

- A. An *employee* shall accrue annual leave from the first day of employment pursuant to the chart in *NMJBPR* 5.04(B) and shall accrue annual leave in proportion to hours worked up to a maximum of eighty (80) hours per *pay period*. In addition to service in the *Judicial Branch*, the *period of service* shall include all time in the Executive or Legislative branches of the State of New Mexico including the Public Defender's Office and District Attorney's Office. (Amended 08/01/10; 07/01/14)
- B. The *Administrative Authority* of a *judicial entity* shall accept the accrued annual leave of an *employee* moving from another *judicial entity*. (Amended 08/01/10)
- C. The *Administrative Authority* of a *judicial entity* may accept the accrued annual leave of an *employee* moving from an agency of the Executive or Legislative branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico. The amount of leave accepted upon transfer should be applied consistently and may be dependent upon budget. Annual leave not accepted by the *judicial entity* shall be paid by the employee's previous agency pursuant to that branch of government's rules. (Added 08/01/10; Amended 07/01/19)
- D. A maximum of 240 hours of annual leave may be carried forward after the last *pay period* beginning in December of each year.
- E. An *employee* who changes to a *temporary position* without a *break in service* may accrue annual leave and may carry forward any annual leave balance and use that leave balance in accordance with the *NMJBPR*. (See definitions of *temporary position* and *benefited temporary employee*) (Amended 07/01/14)

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- F.** An *employee* who is *absent without leave*, on *leave without pay*, on unpaid Family Medical Leave, *suspension without pay*, or any type of unpaid leave shall not accrue annual leave. (Amended 07/01/14)
- G.** An *employee* who separates from service shall be compensated for a maximum of 240 hours of accrued annual leave at the *employee's* current *base pay rate*. (Amended 08/01/10; 07/01/19)
- H.** An *employee* who is elected as a judge or justice shall be paid for annual leave prior to their transfer. (Amended 07/01/19)
- I.** Annual leave pay out upon separation shall not include any *multiple components of pay* such as compensation for Certified Bilingual Communication and *shift differential pay*. [Note: compensation for *compensatory time* buyback upon separation must include the bilingual pay – see 3.09.E.4] (Amended 07/01/19; 07/01/19)
- J.** The estate of an *employee* who dies while employed by the *Judicial Branch* shall be compensated for all of the *employee's* accrued annual leave at the *employee's* final hourly rate. (Amended 08/01/10)

K. Annual Leave Accrual Chart

<i>PERIOD OF SERVICE</i>	<i>HOURS EARNED PER PAY PERIOD</i>	<i>HOURS MAXIMUM CARRY OVER ACCRUAL</i>
Day 1 - 3 years	4.62	240
Over 3 - 7 years	5.54	240
Over 7 – 14 years	6.46	240
Over 14 years and beyond	7.39	240

- L.** An *employee* may use annual leave only after it has been accrued and only when approved in advance by the immediate supervisor, unless advance

[NOTE: Definitions for both Part I (Career or Classified Employees) and Part II (At-Will Employees) begin on page 63; italicized words are defined.]

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approval cannot be obtained because of unforeseen circumstances. Reasonable effort will be made to accommodate the *employee's* leave request while balancing the operational needs of the *judicial entity*.

5.05 ANNUAL LEAVE DONATIONS

(Ref: Annual Leave Donation Program Policy)

- A.** Only an *employee* who meets the following criteria shall be eligible to receive donations of annual leave:
- (1) The *employee* shall be on Family Medical Leave, as outlined in the Annual Leave Donation policy and forms. (Added 07/01/14)
 - (2) The *employee* shall not be receiving Workers' Compensation.
 - (3) The *employee* must have exhausted all:
 - a.** annual leave,
 - b.** sick leave,
 - c.** *compensatory time* off,
 - d.** personal leave, and
 - e.** all other accrued leave before donations may be used. (Amended 07/01/14)
 - (4) The purpose of the leave shall be for a qualifying Family Medical Leave (FML) event. [*Note: see the FMLA policy*] (Amended 08/01/10; 07/01/19)
- B.** An *employee* may donate annual leave to another *employee* or *at-will employee* provided that the *employee* or *at-will employee* receiving the donation has met the eligibility criteria set forth in NMJBPR Section 5.05 (A) and NMJBPR AWE Section 19.05 (A). (Amended 07/01/19)
- C.** Donation of annual leave shall be administered in accordance with the Annual Leave Donation Program Policy.

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5.06 BEREAVEMENT LEAVE

An *employee* may request up to a maximum of five (5) *business days* of bereavement leave with pay to grieve the death of an *immediate family member* or a *domestic partner*. An *employee* may request up to a maximum of two (2) *business days* of bereavement leave with pay to grieve the death of a *family member*. The *employee* shall request approval for this leave from the immediate supervisor. Compensation during bereavement leave shall be commensurate with the *employee's* usual paid work hours. (Amended 08/01/10; 07/01/19)

5.07 BONE MARROW AND ORGAN DONOR LEAVE (Added 07/01/14)

- A. An *employee* may request up to twenty (20) workdays of leave for the purpose of donating an organ or bone marrow. [NMSA 24-28-3, 2013]
- B. Medical verification for the purpose of the leave and leave duration will be required.
- C. An *employee* may request and use donated annual leave for the purpose of donating an organ or bone marrow. If an *employee* requests donations of annual leave but does not receive twenty (20) workdays, the *Administrative Authority* may grant the remainder of the leave up to a maximum of the twenty (20) workdays in *administrative leave*.
- D. Any paid leave of absence granted pursuant to this provision shall not result in a loss of compensation, seniority, annual leave, sick leave or accrued *overtime* for which the *employee* is otherwise eligible.

5.08 COURT LEAVE/JURY DUTY

An *employee* called to serve as a juror or subpoenaed in an official capacity as a non-expert *witness* in a case in which the *employee* is not a party shall be entitled to court leave.

- A. When, in obedience to a subpoena, an *employee* appears as a *witness* before a federal or state grand jury or court, or before a federal or state agency, the *employee* shall be entitled to leave with pay for the required period. *Witness* fees received by the *employee*, as a non-expert *witness*, excluding reimbursement for meals, travel, and *overtime*, shall be remitted to the *employee's* *judicial entity*.

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- B.** An *employee* shall be entitled to leave with pay for serving on a jury and shall not be entitled to receive any jury fees for the normal working hours but shall be entitled to retain reimbursement for meals and travel and any jury service fees earned in excess of normal working hours. Proof of summons must be provided. Jury fees received shall be remitted to the *employee's judicial entity*. (Amended 07/01/14)

5.09 EDUCATIONAL LEAVE

(Ref: Leave Policy; and Application for Educational Leave Form)

An *employee* may be granted educational leave in accordance with the Leave Policy, Section 4. (Amended 08/01/10)

A *full-time employee* who has completed one (1) year of employment and is not on probation may be approved for up to four (4) hours of educational leave per week. *Part-time employees* who work more than twenty (20) hours per week but less than forty (40) may be approved for up to two (2) hours of educational leave per week. Educational leave is paid leave granted during the *employee's regularly scheduled work hours* for the purpose of obtaining formal education that will enhance the *employee's* professional development. This leave may only be used for class attendance, including on-line attendance and regular travel to and from class. Educational leave is not to be used as study time, or to make up a missed lunch should class be scheduled during an employee's normal lunch hour. (Amended 07/01/19)

[Note: To avoid affecting PERA and leave accruals, this leave must be recorded in SHARE as "EDLVR" – "Ed Leave Taken sub/RTR," and not as "EDULV" – Education Leave Paid.]

5.10 FAMILY EDUCATIONAL LEAVE

A *full-time employee* may be granted up to eight (8) hours per calendar year of family educational leave. The purpose of this leave is to provide an *employee* with the opportunity to participate in academic activities (excluding travel time), which occurs during regular scheduled work hours, of an *immediate family member or domestic partner*. (Amended 08/01/10; 07/01/19)

Part-time employees working more than twenty (20) hours per week but less than forty (40) may be granted up to four (4) hours per calendar year of family educational leave. (Added 07/01/19)

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- A. An *employee* must request leave in advance from the *employee's* immediate supervisor and explain the academic activity for which leave is requested.
- B. Academic activities include, but are not limited to: parent/teacher conferences and association meetings, organized field trips, college orientations, school registrations, graduations, tutorial sessions and organized educational programs. Each activity will be considered on a case-by-case basis by the immediate supervisor. Athletic events shall not be considered academic activities. Travel time to the academic event may be included if the event occurs during the *employee's* normally scheduled work hours. (Amended 07/01/19)
- C. The leave allowed under this rule does not have to be taken in consecutive hours and shall be entered as *Administrative Leave* (Amended 07/01/19)
- D. This leave is not accrued leave and is forfeited upon separation.
- E. This leave is limited to the maximum eight (8) hours per calendar year regardless of the number of *immediate family members* of an *employee*. (Amended 08/01/10)

5.11 FAMILY MEDICAL LEAVE

(Ref: Family and Medical Leave Act Policy)

Family and medical leave under the federal Family and Medical Leave Act, 29 U.S.C. Section 2601-2654, (FMLA) shall be administered for eligible *employees* in accordance with the Family and Medical Leave Act Policy.

5.12 HOLIDAYS

The Chief Justice declares *holidays* for the *Judicial Branch*.

5.13 LEAVE WITHOUT PAY

(Ref: Leave Policy; and Request for Leave Act Without Pay Form)

A. Authorized

An *employee* may be granted *leave without pay* for justifiable personal reasons as follows:

- (1) **Short Term** – An *employee* shall apply in *writing*, in advance, for *leave without pay* and may be granted *leave without pay* upon

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approval of the *Administrative Authority*. Short term requests for *leave without pay* include intermittent requests up to thirty (30) consecutive days. (Amended 08/01/10; 07/01/19)

- (2) **Long Term** – An *employee* shall apply in *writing*, in advance, for *leave without pay* for a period more than thirty (30) consecutive calendar days and up to twelve (12) consecutive months. The *employee* will be granted such leave only when the *Administrative Authority* can ensure the *employee* a position of like status and pay at the same geographic location upon the return from *leave without pay*. However, if the *judicial entity* cannot ensure the *employee* a position of like status and pay at the same geographic location and the *employee* agrees in *writing* to waive that requirement. Such leave may be granted without the assurance of a position being available at the end of the leave. (Amended 08/01/10)

B. Effect on Other Leave

An *employee* will not accrue any leave while on *leave without pay*. (Amended 07/01/19)

5.14 MILITARY LEAVE

- A. An *employee* who serves in the State Guard or National Guard, a State Defense Force, a reserve component of the uniformed services of the United States, the Civil Air Patrol or who volunteers for such service shall be granted military leave with or without pay in accordance with the Uniformed Services Employment and Re-employment Rights Act (USERRA), 38 U.S.C. Sections 4301-4335, for “service in the uniformed services” as defined in that Act, and with the New Mexico Statutes and Rules, including, but not limited to NMSA 1978, Sections 20-4-7, 20-5-14, and 20-7-5. The *Administrative Authority* may authorize the hiring authority to temporarily fill a vacancy, and the *employee* may return to work as provided by law. (Amended 07/01/19)
- B. An *employee* who is on military leave with pay shall have the same rights and benefits as any other *employee* who is on leave with pay.

5.15 PERSONAL LEAVE

- A. After one (1) full year of continuous employment in the *Judicial Branch*, a *full-time employee* shall earn personal leave consisting of eight (8) hours each

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calendar year. *Temporary employees* and *probationary employees* are not eligible for the personal *holiday*. (Amended 07/01/14; 07/01/19)

- B.** After one (1) full year of employment, a *part-time employee* shall earn personal leave on a pro-rated basis each calendar year. E.g., *employees* working thirty (30) hours per week shall receive six (6) personal *holiday* hours, *employees* working twenty (20) hours per week shall receive four (4) personal *holiday* hours, etc. (Amended 07/01/14)
- C.** Personal leave must be taken in full at one time.
- D.** Personal leave must be used within the calendar year during which it is earned or it will be forfeited.
- E.** An *employee* who does not take the personal leave day shall not be compensated for it, and shall forfeit it upon separation from the *Judicial Branch*. (Amended 07/01/14)
- F.** The personal leave day of an employee transferring to or from an agency of the Legislative or Executive branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico shall forfeit their personal holiday upon transfer. (Added 07/01/14; amended 07/01/19)

5.16 PHYSICAL FITNESS LEAVE

An *employee* may be granted leave during work hours for physical fitness activity in accordance with a Physical Fitness Activity Policy, if any, of the *judicial entity* for which the *employee* works.

5.17 SICK LEAVE

A. Sick Leave Accrual

A *full-time employee*, including those holding a *benefited temporary position* shall accrue sick leave at the rate of 3.69 hours per *pay period* from the first day of employment. For service of less than eighty (80) hours per *pay period*, sick leave accrual will be prorated. Sick leave may be accrued without limit. (Amended 08/01/10; 07/01/19)

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B. Other Sick Leave Provisions

- (1) An *employee* shall only be granted sick leave with pay for the hours of sick leave accrued or as supplemented by donated annual leave (unless *non-benefited temporary employee* as defined in the rules). (Amended 07/01/19)
- (2) An *employee* abusing sick leave is subject to *disciplinary action* up to and including *termination*.
- (3) An *employee* who is *absent without leave*, on *leave without pay*, on unpaid Family Medical Leave, suspended without pay, or any type of unpaid leave shall not accrue sick leave. (Amended 07/01/14)
- (4) The accumulated sick leave of an *employee* transferring within the *Judicial Branch* or from an agency of the Legislative or Executive branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico shall be accepted by the *judicial entity* to which that *employee* is transferring, provided there is no *break in service*. (Amended 08/01/10; 07/01/14)
- (5) An *employee* who changes to a *temporary position* without a *break in service* may accrue sick leave and may carry forward any sick leave balance and use that leave balance in accordance with the NMJBPR. (See definitions of *temporary position* and *benefited temporary employee*) (Amended 07/01/14; 07/01/19)

C. Use of Sick Leave

- (1) An *employee's* use of sick leave shall be limited to illness, injury, examination, or treatment of the *employee* or care of the *employee's immediate family member* or *domestic partner*; or in accordance with 5.18.C.(2). (Amended 08/01/10; 07/01/14; 07/01/19)
- (2) An employee may be approved to use sick leave to supplement approved bereavement leave for an *employee's immediate family member* or *domestic partner*. (Amended 08/01/10; 07/01/14; 07/01/19)
- (3) If the *employee's* reason for sick leave is known in advance, request for approval shall be made in advance; otherwise, a request for sick leave approval must be made as soon as possible but no later than the

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employee's return to work. The *Administrative Authority* may establish notification requirements for sick leave requests.

- (4) An *Administrative Authority* or *Human Resources* may request an *employee* provide a medical provider's statement when sick leave use is in question. (Added 07/01/19)
- (5) An *Administrative Authority* or *Human Resources* may require a medical release prior to an *employee's* return to work. (Amended 07/01/19)

D. Health Care Provider's Certificate

- (1) Management may request the *employee* to provide a certificate from a *health care provider* verifying the illness, injury, or treatment. (Amended 07/01/19)
- (2) A return to work release is required including any work related restrictions when an *employee* has been out for their own serious medical condition. (See the FMLA policy) (Amended 07/01/19)
- (3) If the requested certificate is not provided, sick leave may be denied, and the *employee* may be ordered to return to work by a specific date. Unauthorized absences shall not be compensated, are considered *absence without leave* and subject to disciplinary action. (Amended 08/01/10; 07/01/19)

E. Compensation for Sick Leave

- (1) In accordance with the provisions of *NMSA 1978*, Section 10-7-10, an *employee* who has accumulated more than 600 hours of unused sick leave is entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of the *employee's* hourly rate of pay for up to 120 hours of sick leave.
 - a. Payment for unused sick leave may be made only once per fiscal year on either the payday immediately following the first full *pay period* in January or the first full *pay period* in July.
 - b. Before payment can be authorized, an *employee* must notify *Human Resources* of the number of unused sick leave hours

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over the 600 and no more than 120 for which the *employee* wishes to be compensated. (Amended 07/01/14)

- (2) Immediately prior to retirement from the judicial service, an *employee* who has accumulated more than 600 hours of unused sick leave is entitled to be paid for unused sick leave in excess of 600 hours at a rate equal to 50% of the *employee's* hourly rate for up to 400 hours of sick leave. This subsection does not apply to an *employee* who separates for any reason other than retirement.
- (3) The estate of an *employee* who dies while employed by the *Judicial Branch* shall be compensated for the *employee's* accrued sick leave hours in excess of 600, at a rate equal to 50% of the *employee's* hourly rate. (Added 07/01/19)

5.18 VOTING LEAVE

An *employee* registered to vote may be absent from work for up to two (2) hours for the purpose of voting between the time of the opening and the time of the closing of the polls on election day or for early voting. (Amended 08/01/10; 07/01/19)

- A. The immediate supervisor may specify the hours during this period in which the *employee* may be absent.
- B. These provisions do not apply to any *employee* whose workday begins more than two (2) hours after the opening of the polls or ends more than three (3) hours prior to the closing of the polls.
- C. Only elections listed under the New Mexico Election Code NMSA 1978, § 1-1-19 are eligible for paid authorized voting leave: (Added 07/01/19)
 - a. General elections;
 - b. Primary elections;
 - c. Statewide special elections;
 - d. Elections to fill vacancies in the office of representative in Congress;
 - e. School district elections;
 - f. Municipal officer or municipal bond elections;

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- g.** Special district officer or special district bond or other special district elections;
- h.** Elections of Indian nations, tribes or pueblos for a voter who is enrolled as a member of the Indian nation, tribe or pueblo and is qualified to vote in the election.

Elections for officers of water, fire, and sanitation districts are not eligible, nor are political caucuses. Managers and supervisors are encouraged to work with their *employees* by allowing time off using the *employee's* accrued leave for other elections, not covered under the New Mexico Election Code.

(Added 07/01/19)

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SECTION 6. PERFORMANCE PLANNING, DEVELOPMENT AND EVALUATION

6.01 PURPOSE

To evaluate an *employee's* performance based on the *employee's* performance plan.

6.02 STANDARDS AND PERFORMANCE PLAN

An immediate supervisor shall, within ninety (90) *business days* of an *employee's* *appointment*, set *job* standards and develop a performance plan to achieve those standards. (Amended 08/01/10)

6.03 EVALUATIONS

- A. An immediate supervisor shall evaluate an *employee* at least annually and in the case of a *probationary employee*, at least once prior to the completion of the *probationary period*.
- B. An immediate supervisor shall evaluate an *employee*;
 - (1) whenever a supervisor wants to make an *employee's* performance a matter of record, or
 - (2) upon change of supervisor, or the employee receives a *promotion, demotion, lateral transfer* or *job reclassification*. (Amended 08/01/10)

6.04 DOCUMENTATION

Evaluation of an *employee* shall be documented on a form approved by the *Director*.

6.05 EMPLOYEE REBUTTAL TO EVALUATION

- A. An *employee* may submit to the immediate supervisor a *written* rebuttal to the evaluation within ten (10) *business days* of receipt of an evaluation and that rebuttal shall become part of the entire evaluation.
- B. As part of the rebuttal, the *employee* may request the *Administrative Authority* review the evaluation, in which case the immediate supervisor shall deliver a copy of the entire evaluation to the *Administrative Authority* within five (5) *business days* of the request.

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- C. Within thirty (30) *business days* from the submission of the request for review, the *Administrative Authority* shall render a *written* decision regarding the entire evaluation, and that decision shall be final.

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SECTION 7. POLITICAL ACTIVITY

7.01 PURPOSE

To establish guidelines for all *employees* regarding participation in political activities.

7.02 ACTIVITIES

A. Permitted Political Activities

An *employee* may:

- (1) be a candidate,
- (2) register to vote,
- (3) express opinions on all political subjects and candidates, and
- (4) engage in political activity to include the following, provided no such activity is conducted while on duty:
 - a. serve as party official and convention delegate,
 - b. attend political rallies,
 - c. sign nominating petitions,
 - d. take an active part in management of political campaigns,
 - e. serve as election officials, or
 - f. make financial contributions to a political candidate, party, or organization.

B. Prohibited Political Activities

An *employee* is prohibited from:

- (1) engaging in any political activity while on duty including but not limited to wearing buttons, posting signs, circulating petitions, or sending e-mails; or

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- (2) using official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office or for any political purpose; or
- (3) using *judicial entity* supplies, equipment or facilities in connection with any political activity; or
- (4) directly or indirectly coercing, attempting to coerce, commanding or advising a state or local officer, *employee* or *at-will employee* to buy tickets for political fund raiser, to pay, lend or contribute anything of value to a party, committee, organization, *judicial entity* or person for a political purpose;
- (5) threatening to deny *promotions* to any *employee* or *at-will employee* who does not vote for certain candidates; or
- (6) requiring or compelling an *employee* or *at-will employee* to apply for membership in or become a member of a political organization or in any manner to take part in political activity.

7.03 CANDIDACY

A. Candidacy

An *employee* becomes a candidate when the *employee* files a petition or nomination papers, pays a filing fee, or is nominated by a political party for a public office.

B. Partisan Political Election

- (1) An *employee* may be subject to *NMJBPR* Section 7.03 (B)(2), be a candidate in a *partisan election* including a judicial position, but the *employee* shall use annual leave or *leave without pay*, subject to the approval of the *Administrative Authority*, if campaigning requires that the *employee* be absent from assigned duties.
- (2) At the discretion of the *Administrative Authority*, an *employee* who is a candidate for an incumbent's office within the same court that the employee is employed, may be required to use annual leave or shall be granted an unpaid leave of absence while the candidacy is pending. If elected, the employee shall continue to use annual leave or unpaid leave of absence until resignation. (Amended 08/01/10; 07/01/19)

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(3) If elected, the *employee* shall resign prior to taking the oath of office.

C. Non-Partisan Political Election

An *employee* may use annual leave or *leave without pay*, subject to the approval of the *Administrative Authority*, to campaign in a *non-partisan election* and if elected, may be granted *administrative leave* to participate in the work of a legally constituted state or local board or commission.

7.04 HATCH ACT (5 U.S.C. 1501-1508) (Added 08/01/10)

An *employee* is responsible for determining if candidacy is in any way limited by the Hatch Act.

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SECTION 8. RECORDS MANAGEMENT, INSPECTION AND RETENTION

8.01 PURPOSE

To establish general guidelines regarding the management and inspection of records.

8.02 RECORDS RETENTION

The *Administrative Authority* shall establish and maintain a records management program in accordance with federal and state laws.

8.03 RECORD INSPECTION BY THE PUBLIC

(Ref: Employee Records Management, Inspection and Retention Policy)

Inspection of public records of the *Judicial Branch* shall be governed by the provisions of the New Mexico Public Records Act, *NMSA* 1978, Section 14-2-1. There are exceptions to right to inspect public records and any record not subject to public inspection shall be in accordance with the Public Records Act.

8.04 EMPLOYEE RECORDS RETENTION

Employee personnel records shall be retained for fifty-five (55) years after the *employee's* date of separation and shall be in accordance with the Records Retention and Disposition Schedules for Personnel Records.

8.05 GRIEVANCE RECORDS RETENTION

The *Administrative Authority* shall retain all grievance records for a period of at least three (3) years after grievances are resolved and then they may be destroyed.

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SECTION 9. DISCIPLINE

9.01 PURPOSE

To provide constructive, progressive steps toward solving an *employee's* performance and/or behavioral problems.

9.02 PROGRESSIVE DISCIPLINE

- A. Progressive discipline generally proceeds from an *oral reprimand* to a *written reprimand*, to a *suspension without pay* or a *demotion* to a *termination*.
- B. Although progressive discipline is the preferred method of achieving corrected *employee* performance and/or behavior, there are instances where a *grievable disciplinary action*, up to and including *termination*, is appropriate without having previously imposed a lesser form of discipline.

9.03 AN EMPLOYEE IN PROBATIONARY STATUS

An *employee* in probationary status:

- A. May be suspended, demoted, or terminated without advance notice, and
- B. Has no grievance rights with regard to *disciplinary actions*, and are excluded from notice and computation of time. (Amended 07/01/14)

9.04 NON-GRIEVABLE DISCIPLINARY ACTION FOR EMPLOYEES

- A. *Oral reprimands* and *written reprimands* shall be placed in the *employee's* personnel file and are not grievable under *NMJBPR* Section 10, Grievance.
- B. An *oral reprimand* or *written reprimand* shall:
 - (1) state the reason(s) the *employee's* performance is inconsistent with expectations,
 - (2) describe a plan of action and results timetable,
 - (3) state the *employee's* right to respond in *writing* within five (5) *business days* from *service* of the reprimand, and (Amended 08/01/10)
 - (4) notify the *employee* that the *oral reprimand* or *written reprimand* will be documented and placed in the *employee's* personnel file.

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9.05 GRIEVABLE DISCIPLINARY ACTION FOR EMPLOYEES WHO HAVE COMPLETED PROBATION

A. Notice of Proposed Disciplinary Action

- (1) The *Administrative Authority* shall issue *written* notice to the *employee* when initiating the proposed *suspension without pay, demotion, or termination* process.
- (2) The Notice shall:
 - a. specify the basis for the proposed *disciplinary action*,
 - b. specify the supporting evidence,
 - c. specify the proposed discipline, and
 - d. advise the *employee* of the right to respond in *writing* and/or to request an informal hearing with the *Administrative Authority* within five (5) *business days* from *service* of the Notice.

B. Response to Notice of Proposed Disciplinary Action

- (1) In the informal hearing and/or *written* response, the *employee* may provide mitigating information regarding the proposed *disciplinary action*.
- (2) The *employee* may select, at the *employee's* expense, a representative to respond in *writing* to the Notice.
- (3) If the *employee* requests an informal hearing, that hearing shall be held within five (5) *business days* of the request, unless an extension has been agreed upon by all parties. The *employee* may select, at the *employee's* expense, a representative to speak on the *employee's* behalf at the hearing. (Amended 07/01/14)

C. Notice of Final Disciplinary Action

- (1) If the *employee* does not respond, the *Administrative Authority* shall issue the Notice of Final *Disciplinary Action* within five (5) *business days* following the end of the allotted response period.

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- (2) If the *employee* responds in *writing* or requests an informal hearing, the *Administrative Authority* shall issue the Notice of Final *Disciplinary Action* within five (5) *business days* of the informal hearing or receipt of a *written* response, whichever occurs last.
- (3) The Notice of Final *Disciplinary Action* shall:
- a. specify the final action to be taken,
 - b. specify the facts forming *just cause* for the *disciplinary action*,
 - c. specify the supporting evidence,
 - d. address any explanations or defenses the *employee* offered in *writing* or during the informal hearing,
 - e. specify the effective date of the *disciplinary action*, which may not be sooner than the next business day from the *service* of the Notice of Final *disciplinary action*, and (Amended 07/01/14)
 - f. advise the *employee* of the right to file a *written* grievance under *NMJBPR*, Section 10.03, with the *Director* within fifteen (15) *business days* of the effective date of the *disciplinary action*.

9.06 DISCIPLINARY ADMINISTRATIVE LEAVE

The *Administrative Authority* may grant *administrative leave* up to a maximum of twenty-five (25) *business days* during a *disciplinary action* proceeding or investigation relating to a proposed *disciplinary action*. (Amended 08/01/10; 07/01/19)

9.07 REMOVAL OF DISCIPLINARY ACTIONS

All *disciplinary actions* shall remain in an *employee's* personnel file. (Amended 08/01/10)

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9.08 NOTICE AND COMPUTATION OF TIME

- A.** Notices prescribed in the rule shall be hand delivered or delivered by U.S. Certified Mail/Return Receipt Requested to the *employee's* last address on record or upon an attorney designated by the *employee*. *Service* by Certified Mail/Return Receipt Requested is complete three (3) *business days* after mail is postmarked. (Amended 08/01/10; 07/01/14).
- B.** *Service* is also complete upon a confirmed receipt of a fax or electronic transmission. (Added 08/01/10)
- C.** Computation of time shall begin on the first *business day* after delivery, proof of *service* or proof of attempted *service*. (Amended 08/01/10; 07/01/14)
- D.** Time limits stipulated in this rule may be extended with mutual *written* agreement by all parties to the proposed *disciplinary action*.

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SECTION 10. GRIEVANCE

(Ref: Grievance Form)

10.01 PURPOSE

To provide an administrative appeal process for an *employee* who has completed probation and who has been *suspended without pay, demoted or terminated*.

10.02 JUDICIAL GRIEVANCE BOARD (Amended 08/01/10)

- A. The Board shall consist of:
- (1) a District Court Judge, or a Court of Appeals Judge;
 - (2) a Magistrate Court Judge, or a Metropolitan Court Judge;
 - (3) a personnel officer from the public or private sector other than the *Judicial Branch*, or a retired human resources professional, or an employed or retired judge or attorney with employment law experience;
 - (4) a *full-time* supervisory or managerial judicial *employee* who has completed probation; and
 - (5) a *full-time* non-supervisory judicial *employee* who has completed probation.
- B. The Supreme Court shall appoint Board members and shall designate the chairperson from among the members. If an appointed member has a conflict, the Supreme Court shall appoint an alternate.
- C. Board members may serve two (2) consecutive three (3) year terms.
- D. Board members appointed to fill an unexpired term may serve two (2) consecutive three (3) year terms in addition to the unexpired term.
- E. The Board shall be bound by the *NMJBPR* unless waived by the Supreme Court.

10.03 FILING A GRIEVANCE

- A. Within fifteen (15) *business days* of the effective date of the action, an *employee* who has completed probation may file a grievance to appeal a *suspension without pay, demotion, or termination*. (Amended 08/01/10)

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- B.** An *employee* shall initiate a grievance by delivering a completed Grievance Form to the *Director*.
- C.** The Grievance Form shall contain a statement of facts, the issues and the relief sought and shall have attached to it a copy of the Notice of Final *Disciplinary Action*. (Amended 08/01/10)
- D.** The chairperson shall dismiss the grievance for lack of jurisdiction if the grievance is not filed within fifteen (15) *business day* of the effective date of the action.

10.04 GRIEVANT’S RIGHTS

- A.** An *employee* and *witnesses* shall be free from any restraint, interference, coercion, *discrimination*, and/or *retaliation* resulting from the filing of a grievance.
- B.** An *employee* may have representation at the *employee’s* expense.

10.05 CONSOLIDATION

If mutually agreed upon by the *Grievant* and the *Administrative Authority*, the chairperson may consolidate appeals into one (1) hearing where the *Grievants* have similar issues and there is a singular *Administrative Authority*.

10.06 PRE-GRIEVANCE HEARING REQUIREMENTS

- A.** The *Director* or designee shall deliver a copy of the Grievance Form to the chairperson and to the affected *Administrative Authority* within five (5) *business days* of receipt.
- B.** The chairperson shall determine jurisdiction over the appeal within five (5) *business days* of receipt of the Grievance Form.
- C.** The chairperson shall set a *grievance hearing* to commence within forty-five (45) *business days* from receipt of the Grievance Form by the *Director*. (Amended 08/01/10)
- D.** The *Director* or designee shall notify all parties to the grievance of the hearing date, time, and place.
- E.** No later than ten (10) *business days* prior to the hearing, each party shall deliver to *AOC HRD* a *witness* list and copies of exhibits. *Witness* lists and copies of exhibits will be provided to the chairperson, board members and

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associated parties by the AOC HRD within five (5) *business days*. (Amended 08/01/10)

- F.** If the *Grievant* wants the hearing open to the public, the *Grievant* shall deliver a *written* request to the AOC HRD at least five (5) *business days* before the commencement of the hearing; otherwise the hearing shall be closed.

10.07 CONDUCT OF GRIEVANCE HEARING

- A.** The chairperson shall conduct the hearing and administer oaths to all *witnesses*.
- B.** Three (3) board members shall constitute a quorum. A board member may attend a meeting and vote in person or by teleconference. A board member may not vote through proxy. (Amended 07/01/14; 07/01/19)
- C.** The hearing shall be recorded.
- D.** The hearing shall be conducted in an orderly and informal manner without strict adherence to The New Mexico Rules of Evidence. The determination of the chairperson regarding admissibility of evidence shall be final. The *Administrative Authority* shall have the burden of proof by a preponderance of the evidence. (Amended 08/01/10)
- E.** The order of the hearing shall be:
- (1) opening statements:
 - a.** by *Administrative Authority*
 - b.** by *Grievant*
 - (2) presentation of case:
 - a.** by *Administrative Authority*
 - b.** by *Grievant*
 - (3) rebuttal and surrebuttal
 - (4) closing statements:
 - a.** by *Administrative Authority*
 - b.** by *Grievant*

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10.08 GRIEVANCE BOARD'S DECISION

- A. At the conclusion of the hearing, the board shall retire into *executive session* to deliberate.
- B. The *executive session* shall not be recorded.
- C. No later than fifteen (15) *business days* after conclusion of the hearing, the board shall issue its *written* decision, which shall remain confidential unless waived by the *employee*, and shall provide copies to the parties. The *Administrative Authority* may use the *written* decision to effectuate its provision. One copy shall be placed in the *Grievant's* personnel file. The decision shall contain findings of fact and shall order remedial action or denial of the grievance. (Amended 08/01/10)
- D. The decision of the board shall be final.

10.09 NOTICE AND COMPUTATION OF TIME

- A. Notices prescribed in this rule shall be hand delivered or delivered by U.S. Certified Mail/Return Receipt Requested to the *employee's* last address on record or upon an attorney designated by the *employee*. *Service* by Certified Mail/Return Receipt Requested is complete three (3) *business days* after mail is postmarked. (Amended 08/01/10; 07/01/19)
- B. *Service* is also complete upon a confirmed receipt of a fax or electronic transmission. (Added 08/01/10)
- C. Computation of time shall begin on the first *business day* after proof of *service* or proof of attempted *service*. (Amended 08/01/10)
- D. Time limits stipulated in this rule may be extended with mutual *written* agreements by all parties to the grievance and approval of the chairperson.

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SECTION 11. OUTSIDE EMPLOYMENT

11.01 PURPOSE

(Ref: Outside Employment Approval Form and NM Judicial Branch Code of Conduct, Canon 4)

To allow outside employment under certain circumstances.

11.02 ENGAGING IN OUTSIDE EMPLOYMENT

A. Before an *employee* may engage in outside employment (including self-employment), compensated or non-compensated, the *employee* shall complete an Outside Employment Approval Form, and have such outside employment approved by the *Administrative Authority*, as provided in *NMJBPR* Section 11.02 (B).

B. The *Administrative Authority* shall review the information provided on the form and at the *Administrative Authority's* discretion may approve the request, if:

- (1) no conflicts of interest result,
- (2) the outside employment does not interfere with the *employee's* job performance, and is not otherwise detrimental to the interests of the *Judicial Branch*, (Amended 08/01/10)
- (3) the outside employment is not directly related to the *practice of law* unless it is *pro bono work* approved by the *Administrative Authority*, and
- (4) the *employee* gives *written* notice to the *Administrative Authority* before the work is commenced. The notice shall include the name of the *employer* and the type of work to be performed.

C. Approval may be withdrawn anytime at the discretion of the *Administrative Authority*. Once approval has been granted, the *Administrative Authority* may request the *employee* to provide an updated Outside Employment Form and may approve or disapprove the outside employment as provided in *NMJBPR* 11.02(B). (Added 08/01/10)

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SECTION 12. EMPLOYEE FITNESS TO WORK

This section is subject to any limitations of the Workers' Compensation Act.

12.01 PURPOSE

The *NMJB* is committed to ensuring a safe and productive working environment; that all employees are provided information on the effects of drug and alcohol abuse; and to require drug and/or alcohol testing when objective evidence provides reasonable suspicion. (Amended 07/01/19)

12.02 DRUG/ALCOHOL TESTING

(Ref: Drug and Alcohol Free Work Place Policy and Drug/Alcohol Testing Policy)

The *NMJB* is committed to ensuring *employees* are capable of performing essential duties and responsibilities in a safe manner and in a drug and alcohol free *work place*. (Added 07/01/19)

The *Administrative Authority* may require an *employee* to undergo drug and *alcohol* testing based on *reasonable suspicion* that the *employee* is impaired to any extent by drugs and/or alcohol while on duty. Drug and alcohol testing shall be conducted in compliance with the Drug/Alcohol Testing Policy.

12.03 FITNESS FOR DUTY

If an employee exhibits objective indications that he or she is physically or mentally unfit to perform the essential functions of the job, the *Administrative Authority* may request that the employee's fitness for duty be evaluated by a medical provider. (Amended 07/01/19)

12.04 TERMINATION

The *Administrative Authority* may terminate an *employee* pursuant to the procedure outlined in *NMJBPR*, Section 9.0, who is incapacitated to the extent that the *employee* is unable to perform the essential functions as assigned with or without a reasonable accommodation, if the *employee*:

- A. does not return to work at the conclusion of family and medical leave benefits,

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- B.** has been offered and refused a modified duty assignment that complies with the work restrictions certified by a *health care provider*,
- C.** fails to reach Maximum Medical Improvement (MMI) and return to full duty at the conclusion of the modified duty assignment which shall not exceed six (6) months, or
- D.** cannot perform the essential functions and a reasonable accommodation cannot be made.

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SECTION 13. AMERICANS WITH DISABILITIES ACT (ADA) (Added 07/01/19)

This section is subject to any limitations of the Workers' Compensation Act.

13.01 PURPOSE

The *NMJB* is committed to ensuring to complying fully with the Americans with Disabilities Act (ADA) and the Americans with Disabilities Act Amendments Act (ADAAA), which prohibit discrimination based on disability and ensure equal opportunity in employment for qualified individuals with disabilities.

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SECTION 14. COMPLAINTS

14.01 PURPOSE

To establish a procedure for an *employee* to file a *complaint* for an alleged violation of the *NMJBPR*, other than to request a review of a performance evaluation, any *disciplinary action* (oral or *written reprimand*, *demotion*, *suspension without pay*, *just cause*, *termination*), or Grievance Board Decision. (Amended 08/01/10)

14.02 COMPLAINT PROCESS

- A.** An *employee* may use the *complaint* process to allege a violation of the *NMJBPR* provided however, the *complaint* process cannot be used to review a performance evaluation, any *disciplinary action* (*oral reprimand* or *written reprimand*, *demotion*, *suspension without pay*, *just cause*, *termination*), or Grievance Board Decision. (Amended 08/01/10).
- B.** An *employee* may file a *written complaint* with the *Administrative Authority* within fifteen (15) *business days* of an alleged violation. The *complaint* shall include a specific statement of facts and the relief requested.
- C.** The *Administrative Authority* may handle the *complaint* or assign it to a supervisor.

14.03 INFORMAL HEARING

- A.** An informal hearing to discuss the matter shall be held within ten (10) *business days* after the *employee* has submitted the *complaint*.
- B.** Time limits for the informal hearing may be extended upon mutual agreement.
- C.** If the *Administrative Authority* has assigned the matter to a supervisor, the supervisor shall, within five (5) *business days* of the informal hearing, provide the *employee* and the *Administrative Authority* with a *written* report of the results of the informal hearing.

14.04 DECISION

The *Administrative Authority* shall render a *written* decision within ten (10) *business days* of the informal hearing. This decision is final.

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SECTION 15. FURLOUGH AND LAYOFF

15.01 PURPOSE

To establish a plan for an *employee's furlough or layoff*.

15.02 FURLOUGH OR LAYOFF

- A.** The need for an *employee furlough or layoff* shall be documented in a *Furlough or Layoff Plan*.
- (1) The Plan shall be submitted to the *Director* for approval at least thirty (30) *business days* prior to any action being taken. The Plan shall include the criteria to be used to determine the order of *furlough or layoff* and the order in which affected *employees* will be returned to pre-plan status. (Amended 08/01/10)
- (2) *Notification in writing* shall be given to the affected *employee* at least fifteen (15) *business days* prior to *furlough or layoff*.
- B.** An *employee* has no grievance rights with regard to *furlough or layoff* actions.

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**GLOSSARY OF TERMS
NM Judicial Branch**

Personnel Rules Part I and Part II

Absence Without Leave or AWOL – An unauthorized absence from the *job*, which shall result in unpaid leave. (Added 08/01/10) *Employees* who fail to appear for work without authorized leave or who appear for work but are in violation of policies governing the *employee's* readiness for work shall be considered to be *absent without leave*. *Employees* shall not be paid for any periods of *absence without leave* and shall not accrue annual or sick leave. *Absence without leave* is *just cause* and may result in *disciplinary action* up to and including *termination*. (Amended 07/01/14; 07/01/19)

Active Duty (or call to *active duty*) – Duty under a call or order to *active duty* (or notification of an impending call or order to *active duty*) in support of a contingency operation. A call to *active duty* for purposes of leave taken because of a *qualifying exigency* refers to a Federal call to *active duty*, not a state call, unless under order of the President of the United States. (Added 08/01/10)

Administrative Authority – Individual or designee with the primary responsibility to supervise and coordinate the administration of a *judicial entity*, or as designated by the Chief Judge and approved by the Supreme Court Order. (Ref: *Administrative Authority, Appointing Authority* and *At-Will Employee Policy*.) (Amended 07/01/19)

Administrative Compensatory Time - Time requested by the *Administrative Authority* and approved in writing by the *Director* awarding *administrative compensatory time* to exempt, non-exempt and *at-will employees* for extraordinary efforts undertaken which have a statewide or judicial wide positive impact in excess of eighty (80) hours in a *pay period*. (Amended 07/01/14) See also *compensatory time*.

Administrative Compensatory Time Buy-Back – With the written approval of the *Director* the *Administrative Authority* may allow an *employee* to sell back to the *judicial entity* unused and accrued *administrative compensatory time*. (Added 07/01/14)

Administrative Leave – Paid leave authorized by the Chief Justice or *Administrative Authority*.

Alcohol - Consumable *non-prescription* substances which, contain *alcohol* such as, without limitation, spirits, wine, malt beverages and intoxicating liquors. (Amended 08/01/10)

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Alternate Classification Committee Member – An individual appointed by the Supreme Court to serve as an alternate member of the *Classification* committee and who has voting rights when selected to replace a *Classification* committee member. (Added 08/01/10)

Alternative Pay Range – The *pay range* assigned to a *job* based on the current market rate for benchmark *jobs* in the relevant labor market(s).

AOC – Administrative Office of the Courts.

AOC HRD – Administrative Office of the Courts Human Resources Division. (Added 08/01/10)

AOC HRD Director - *Director* of the *AOC HRD*, or designee. (Added (08/01/10)

Appearance of Impropriety – Impropriety is a higher standard than simply following the rules or obeying the law; who defines impropriety is determined by the appearance or perception of it. As important as actual impropriety, the *appearance of impropriety* can call into reasonable question whether conduct is, or appears to be, unduly influenced or that there was an unfair advantage to a person or party. The test for the *appearance of impropriety* is whether the conduct could create in a reasonable mind a perception that the *employee's* ability to carry out judicial responsibilities with integrity and impartiality may be affected. (See the NMJB Canons) (Added 07/01/19)

Appointing Authority – The individual who has the primary responsibility to recruit, review and recommend applicants for vacant at-will positions in the *Judicial Branch*. An *appointing authority* may designate this responsibility to another supervisor or manager. (Ref: *Administrative Authority*, *Appointing Authority* and *At-Will Employee* List Policy effective 08/01/10) (Amended 08/01/10; 07/01/19)

Appointment – The act by which an *at-will employee* or *employee* is hired by the *Judicial Branch*. (Amended 08/01/10)

Assigned Market Value – Benchmark *pay rate* for a complete set of tasks assigned to a *classification* represented by 100% of the *pay range*.

Associated Parties – *Administrative Authorities*, managers, supervisors, *at-will employees*, and *employees* who occupy a *job classification* or who have substantive knowledge of the *job classification* being reviewed as part of a *classification study*. (Added (08/01/10)

At-Will Employee – A person in the *Judicial Branch* who holds an at-will job classification as delineated in the *New Mexico Judicial Branch Job Classification and Pay Schedule*, and excluding a justice or judge. (*Administrative Authority*, *Appointing Authority* and *At-Will Employee* Policy.)

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(Amended 08/01/10; 07/01/14; 07/01/19)

Base Pay Rate - An *employee's* pay expressed as an hourly rate or as an annual salary, excluding extra forms of compensation, which may be temporary. Extra forms of compensation may include *shift differential pay*, on-call pay, multi-lingual pay, and *temporary salary increase or temporary promotion pay*. When an *employee* separates employment from the *Judicial Branch* their terminal leave payout is calculated using the *employee's base pay rate*. (Added 07/01/14; Amended 07/01/19)

Benefited Temporary Employee – An incumbent in a *benefited temporary position* is eligible to accrue annual and sick leave in accordance with the *NMJBPR Part I and Part II*, pay into PERA and may elect medical benefits. A *temporary employee* whose original term of employment was to be less than six (6) months, but is later determined that employment will be longer than six (6) months must be offered medical benefits, begin contributing to PERA, and begin accruing annual leave. See also *Non-Benefited Temporary Employee*. (Added 07/01/14; amended 07/01/19)

Benefited Temporary Position – A position created for a period of no less than six (6) months, and in which the incumbent will be a *benefited temporary employee*. See also *Non-Benefited Temporary Position*. (Added 07/01/14)

Break in Service – A period of state (Executive or Judicial) or legislative non-employment that is a result of *resignation* or *termination* and is at least one calendar day or more. (Added 08/01/10)

Business Day – 8:00 a.m. to 5:00 p.m. local time, Monday through Friday, except *holidays*.

Classification – A collection of tasks, responsibilities, knowledge, and abilities considered essential to a *job*.

Classification Plan – That part of the *Classification* and Compensation Plan containing a *job classification* table, a *job content* table, a *job evaluation* table, and a grade structure table for each *classification*.

Classification Study – A study designed to identify duties and responsibilities of a *job* and to validate minimum qualifications.

Classified or Career Status Employee [replacing former *Permanent Employee* definition] – An *employee* who occupies a *permanent position* or *term position* and has completed the assigned *probationary period* within the *Judicial Branch* excluding a justice, judge, or *at-will employee*. (See also *term position* and *term employee*) (Amended 07/01/14; 07/01/19)

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Closed Session – A session where attendance is limited to committee members and staff members specifically invited by the chairperson.

Compa Ratio – Pay expressed as a percentage of the *assigned market value* of a *pay range*. Also known as Comparative Ratio, is a formula commonly used to assess the competitiveness of an *employee's* pay level. (Added 08/01/10; amended 07/01/19)

Compa Ratio to Compa Ratio – Movement of an *at-will employee* or *employee's pay rate* to maintain *compa ratio* placement. (Added (08/01/10)

Comparison Market - The market as defined in the *Classification* and Compensation Plan or the competitive market identified for the *job classification* or series.

Compensation Restoration - Pay adjustment made upon new higher *pay range* assignment, due to a *job classification study*, to restore fully or partially the *compa ratio* placement of an *at-will employee* or *employee* in the new assigned *pay range*. (Added 08/01/10)

Compensatory Time – *Compensatory time* or “comp time” is paid time off granted to an *employee* for working extra hours and in lieu of *overtime* compensation. (Added 07/01/14)

Complaint – An allegation of any violation of the *NMJBPR* or *NMJBPRawe* other than to request a review of a performance evaluation, a reprimand, *demotion*, *suspension without pay*, *termination*. (Amended 08/01/10)

Controlled Substance - Any drug or other substance listed in schedules of the *Controlled Substances Act* (21 U.S.C. 812), and as further defined by 21 C.F.R 1308.11 through 1308.15, and any material containing methamphetamines. Generally, these are drugs that have a high potential for abuse such as, but not limited to, marijuana, cocaine, opiates, phencyclidine (PCP), heroin, amphetamines and “crack;” metabolite of those drugs, or any *non-prescription* substance containing those drugs. A *controlled substance* also includes “legal drugs” that are not prescribed by or taken under the supervision of a licensed physician. (Added (08/01/10)

Conviction – A finding of guilt (including a plea of *nolo contendere*) or imposition of a sentence, or both, by any judicial body charged with the responsibility to determine violations of the federal, state, or Tribal *criminal drug statutes*. (Added 08/01/10, amended 08/24/17)

Covered Military Member – The *employee's* spouse, son, daughter, *domestic partner*, or parent on *active duty* or call to *active duty* status who is a member of the National Guard or Reserves. (Added 08/01/10)

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Covered Service Member - A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for a *serious injury or illness*. (Added 08/01/10)

Criminal Drug Statute - A federal or non-federal criminal statute involving the manufacture, distribution, dispensation, use, or possession of a *controlled substance* or *alcohol*. (Added (08/01/10)

Demotion – An involuntary downward change of *job* at a lower *pay range* with a reduction in pay for disciplinary reasons.

Designated Holiday – A day designated by the Chief Justice as a *holiday*. (Added (08/01/10)

Director – The *Director* of the New Mexico Administrative Office of the Courts or designee. (Amended 08/01/10)

Disciplinary Action – A constructive action designed to correct an *employee's* performance and/or behavior that are below acceptable standards.

Discrimination - Any practice or behavior, whether intentional or not, which has a negative impact on an individual or group because of personal characteristics or circumstances unrelated to the person's abilities or the employment issue in question (e.g., disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation and any other status protected by law, except where there is a bona fide occupational qualification which justifies a differentiation). (Amended 9/15/14; 07/01/19) See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation Policy*)

Disparate Treatment – When an *employee* is treated differently from others. The different treatment is based on one or more of the protected factors and the different treatment is intentional. For example, *disparate treatment* occurs when a supervisor allows the majority of his/her *employees* to enjoy a particular job benefit but denies a single *employee* that same benefit. (Added 9/15/14, amended 07/01/19) (See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation Policy*)

Domestic Partner – A person who is in a committed relationship with an *at-will employee* or *employee* and who both share a primary residence for twelve (12) or more consecutive months and who are jointly responsible for the common welfare of each other and who share financial

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obligations, as evidenced by an affidavit of *domestic partnership* executed by the *at-will employee* or *employee* and the other person, as required by Executive Order 2008-101. (Amended 08/01/10)

Double-fill – With the approval of the *Director* a *permanent position* or *term position* occupied temporarily and for a period not to exceed six (6) months by more than one (1) incumbent. (Added 07/01/14)

Drug Testing Coordinator – An *employee* appointed by the *Administrative Authority* for the respective *judicial entity* to coordinate drug testing. (Added 08/01/10)

Effectively Vacant - A position that is filled with an *at-will employee* or *employee* who is on leave. (Added (08/01/10)

Elections for Voting Leave - Elections listed under the New Mexico Election Code *NMSA 1978, § 1-1-19* are eligible for paid authorized voting leave and includes general elections, primary elections, statewide special elections, elections to fill vacancies in the office of representative in Congress, school district elections, municipal officer or municipal bond elections; or special district officer or special district bond or other special district elections. Elections for officers of water, fire, and sanitation districts are not eligible, nor are political caucuses. (Added 07/01/19)

Employee – A person who holds a *permanent position* or *term position* within the *Judicial Branch*, excluding a justice, judge, or *at-will employee*. Also known as a *classified or career status employee*. An incumbent in a *Benefited Temporary Position* shall be considered an *employee* for the purposes of leave accrual to the extent that the *employee* accrues annual leave in accordance with *NMJBPR Section 5.03 (B)*. See also *benefited temporary employee and non-benefited temporary employee*. *Employees in temporary positions* do not complete a *probationary period* and are ineligible for a personal *holiday*. (Amended 07/01/14)

Employer – The State of New Mexico *Judicial Branch*. (Added 08/01/10)

Employment Status – A condition of employment including *probationary, term, permanent, or temporary*. (Added 08/01/10)

Equal Job Match - *Job classifications* that have similar duties, level of responsibility, complexity and required minimum qualifications. (Added 08/01/10)

Equivalent Position - One that is virtually identical to the *at-will employee's* or *employee's* former position in terms of pay, benefits and working conditions, including privileges, perquisites (perks) and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. (Added 08/01/10)

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Essential Employee - An *at-will employee* or *employee* who performs duties determined to be required to assure that necessary services will be provided, as determined by the *Administrative Authority*. (Added 08/01/10)

Executive Session – A session where matters of opinion are being deliberated and where attendance is limited to the board members and staff members specifically invited by the chairperson.

Exigent Circumstances Leave – Leave taken by an eligible *employee* who is the spouse, son, daughter, parent or *domestic partner* of the *covered service member on active duty* (or has been notified of an impending call or order to *active duty*) in the Armed Forces in support of a contingency operation. (Added 08/01/10)

Fair Labor Standards Act (FLSA) – Federal law governing and regulating working conditions, record keeping and compensation calculations for covered *employees*.

Family Member – Is a spouse, *domestic partner*, parent, parent of *domestic partner*, mother-in-law, father-in-law, stepparent, child, son-in-law, daughter-in-law, stepchild, child of *domestic partner*, brother, stepbrother, brother-in-law, sister, stepsister, sister-in-law, brother of *domestic partner*, sister of *domestic partner*, grandparent, grandchild, uncle, aunt, nephew, niece, great grandchild and great grandparent. (Amended 07/01/14; 07/01/19)

FLSA Exempt – An *employee* who is “exempt” from the *FLSA overtime* provisions and may be paid or compensated for *overtime worked* in excess of 80 hours in a *pay period* at *straight time*. (Amended 08/01/10)

FLSA Not-Covered – An *at-will employee* who is not covered under the *FLSA* pursuant to §3€(2)(C)(i)(II). *FLSA Not-Covered at-will employees* may not accrue *compensatory time*. (Amended 08/01/10, 07/01/14; 07/01/19)

FLSA Non-Exempt – An *employee* who is covered by *FLSA overtime* provisions and is paid or compensated at time and one-half for actual hours worked in excess of forty (40) hours in a designated *work week*. (Amended 08/01/10)

Full-Time – An aggregate of eighty (80) hours per *pay period*. An *employee* must work more than thirty (30) hours per week or 130 hours per month to be considered *full-time* and eligible for medical insurance under the Affordable Care Act. See also *Non-Benefited Temporary Position* and *Benefited Temporary Position*. (Amended 07/01/19)

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Furlough – A full or partial reduction in an *employee's* work schedule and corresponding pay for non-disciplinary reasons due to lack of work or funds. (Amended 08/01/10)

Grant - An award of financial assistance, including a cooperative agreement, in the form of money, or property in lieu of money, by a federal agency. The term includes block grant and entitlement grant programs. (Added (08/01/10)

Grievable Disciplinary Action – An action taken that affects an *employee's* property rights and an action taken solely by the *Administrative Authority*, including *suspension without pay, demotions, or termination*. (Amended 08/01/10)

Grievance Hearing – An administrative hearing where an *employee* who has completed probation may appeal a *suspension without pay, demotion, or termination*. (Amended 08/01/10)

Grievant – An *employee* who has completed the *probationary period* and has filed a grievance.

Harassment –Is unwelcome behavior or conduct that substantially interferes with an individual's employment. *Harassment* may include, but is not limited to, verbal or physical attacks, graphic or written statements, threats, or slurs. Whether the alleged conduct constitutes prohibited *harassment* depends on the totality of the particular circumstances, including the nature, frequency and duration of the conduct in question. Any type of *harassment* is prohibited, to include behavior which might be described as tormenting, persecuting or hassling, which is seriously offensive in nature. To constitute prohibited *harassment* which can lead to discipline under this Policy, the conduct must be such that it detrimentally affects the individual in question and would detrimentally affect a reasonable person under the same circumstances. *Harassment* includes creating a *hostile work environment* by creating a *work place* situation where an *employee* cannot reasonably perform work due to behaviors by management, *employees*, justices or judges that are clearly contrary to appropriate management or professional behavior. To be unlawful, *harassment* is unwelcome conduct based on one or more protected factors such as disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation and any other status protected by law. *Harassment* becomes unlawful where 1) enduring the offensive conduct becomes a condition of continued employment, or 2) the conduct is severe or pervasive enough to create a work environment that a reasonable person would consider intimidating, hostile, or abusive. Anti-*discrimination* laws also prohibit *harassment* against individuals in *retaliation* for filing a *discrimination* charge, testifying, or participating in any way in an investigation, proceeding, or lawsuit under these laws; or opposing employment practices that they reasonably believe discriminate against individuals, in violation of these laws. (Amended 08/01/10; 9/15/14; 07/01/19) See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation* Policy)

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Health Care Provider – Any of the following: (Ref: 29 CFR 825) (Amended 08/01/10; 07/01/19)

- (1) Doctor of medicine or osteopathy, authorized to practice medicine or surgery by the state in which the doctor practices.
- (2) Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors authorized to practice in the State and performing within the scope of the practice under state law.
- (3) Nurse practitioners, nurse-midwives, clinical social workers and physician assistants authorized to practice in the state and performing within the scope of the practice under state law. (Amended 07/01/19)
- (4) Christian Science practitioners listed with the First Church of Christ Science in Boston, Massachusetts.
- (5) Any *health care provider* from whom a State of New Mexico contracted health plan will accept a certification for the existence of a *serious health condition* to substantiate a claim for benefits.
- (6) A *health care provider* listed above who practices in a country other than the United States who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his/her practice as defined under such law.

Hiring Authority – the individual designated by the *Administrative Authority* who has the primary responsibility to recruit, review and recommend applicants for vacant position.

Holiday – Each year the Chief Justice shall designate the dates on which legal public *holidays* shall be observed. (Added 07/01/14)

Holiday Pay – The straight-time (hour for hour) pay entitlement granted to eligible *at-will employees* and *employees* for recognized non-worked workdays, which are declared *holidays* by the Chief Justice; not to exceed eight (8) hours per day. (Added 07/01/14)

Holiday Premium Pay - The time and one-half *compensatory time* off or, if approved by the *Administrative Authority*, the time and one-half pay received by an *at-will employee* or *employee* for all hours actually worked on a *holiday*, in addition to normal *holiday pay*. (Added 08/01/10)

Hostile Work Environment – A term used to describe a *work place* situation where an *employee* cannot reasonably perform his or her work, due to certain behaviors by management or co-workers.

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A *hostile work environment* may be a form of *harassment*. It is demonstrated by severe and pervasive conduct that permeates the work environment and interferes with an *employee's* ability to perform his or her *job*. It is very specific behavior that causes severe undue work stress to the *employee*, and inhibits work performance. The conduct or behavior must be pervasive and constitute a pattern and is based upon the totality of the circumstances rather than consist of one or two isolated incidents. (Added 3/01/12; Amended 9/15/14; 07/01/19) (See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation Policy*)

Household Member – Person(s) living together at the same residence. (Added 08/01/10)

Human Resources – The Human Resources Professional located within the employee's *judicial entity*, or *AOC HRD*. (Added 07/01/19)

Immediate Family Member – A child for whom the *at-will employee* or *employee* has acted as parent, regardless of the blood relation; biological parents or anyone who acted as a parent when the *at-will employee* or *employee* was a child; and husband or wife as defined under the laws of the State of New Mexico, and *domestic partner*. (Added 08/01/10; Amended 07/01/14)

Inclement Weather Causing Hazardous Road/Travel Conditions – Weather and road conditions in the immediate area where the work site is located that result in making travel dangerous to and from the office of the *judicial entity*. (Added 08/01/10)

Intermittent Leave - Leave taken at separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from a half hour or more to several weeks. (Added 08/01/10)

Job – A collection of assigned tasks and responsibilities as listed in the *job* description and contained in the Classification and Compensation Plan.

New Mexico Judicial Branch Job Classification and Pay Schedule – A listing of all job classifications used in the Judicial Branch and their corresponding pay range.

Job Content Pay Range - The *pay range* assigned to a *job* as a result of the adopted method of *job measurement* that establishes the relative *job* worth to the *Judicial Branch*. (Added 08/01/10)

Job Measurement – A process that involves the exercise of judgment in identifying and assessing the differences between *jobs*.

Job Posting – An announcement regarding a vacancy within the *Judicial Branch*.

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Judicial Branch – The Supreme Court, the Court of Appeals, Administrative Office of the Courts, District, Metropolitan and Magistrate Courts, the Supreme Court Building Commission, the New Mexico Compilation Commission, the Supreme Court Law Library and the Judicial Standards Commission.

Judicial Branch Property - Any court, office, training facility, vehicle, land, or other real property owned, leased, rented, occupied, or operated by the State of New Mexico and/or the *Judicial Branch*. (Added 08/01/10)

Judicial Entity – The Supreme Court, Court of Appeals, Administrative Office of the Courts, District, Metropolitan and Magistrate Courts, Supreme Court Building Commission, New Mexico Compilation Commission, Supreme Court Law Library and Judicial Standards Commission.

Just Cause – *The list below provides examples of just cause and is not considered all inclusive.* Performance and/or behavior relating to the *employee's* work that is inconsistent with the *employee's* obligation to the *employer* and forms the basis for discipline. Examples of *just cause* include but are not limited to:

- (1) failing to comply with federal and state constitutions, statutes, municipal ordinances, rules and regulations including the New Mexico *Judicial Branch* Personnel Rules or Policies; (Amended 07/01/14)
- (2) failing to comply with a lawful order or to accept a reasonable and proper assignment from an immediate supervisor or the *Administrative Authority*;
- (3) performing assigned duties in an inefficient, incompetent, or negligent manner;
- (4) failing or refusing to perform *job* requirements satisfactorily;
- (5) using court property, equipment, or funds in a careless, negligent, or improper manner;
- (6) stealing court property, equipment or funds;
- (7) being insubordinate;
- (8) threatening or abusing another person in the *work place*;
- (9) bringing a weapon into the *work place*;

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- (10) being chronically absent, tardy or arriving at work unfit for duty; (Amended 07/01/14)
- (11) having unauthorized absences;
- (12) attempting to use undue influence for a *promotion*, leave, favorable assignment, or other individual advantage;
- (13) failing to obtain and maintain current licensure or certification required as a condition of employment;
- (14) falsifying or mishandling official records or documents;
- (15) attempting to use influence to affect a court action's outcome;
- (16) making a knowingly false statement to judges or court staff regarding court business;
- (17) consumption, distribution or possession of intoxicants or *controlled substances*; (Amended 07/01/19)
- (18) reporting to work and/or being under the influence or smelling of intoxicants or *controlled substances* while on duty; (Amended 07/01/19)
- (19) harassing or intimidating another person based on one (1) or more protected factors such as disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation and any other status protected by law. (Amended 07/01/19)
- (20) discriminating against another person because of personal characteristics or circumstances unrelated to the person's abilities or the employment issue in question (e.g., disability, serious medical condition, sex, age over forty (40), race, color, religion, national origin, pregnancy, citizenship, ethnic origin, ancestry, sexual orientation, marital status, military leave, veteran status, genetic information, gender identity, socioeconomic status, political affiliation), and any other status protected by law, except where there is a bona fide occupational qualification which justifies a differentiation. (Amended 07/01/19)
- (21) retaliating against another person;

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- (22) violating the obligation of confidentiality expected of *Judicial Branch employees*;
- (23) acting in a manner that reflects poorly upon the integrity of the *Judicial Branch*;
- (24) participating in unauthorized political activity;
- (25) being convicted of a felony, misdemeanor, or municipal ordinance where the provisions of the Criminal Offender Employment Act apply;
- (26) abandoning a *Judicial Branch* position;
- (27) failing to report for duty, without approved leave, for three (3) consecutive scheduled work days, or being placed on absence without approved leave (*AWOL*); (Amended 07/01/14)
- (28) failing to comply with the provisions contained in the *NMJBPR* or applicable policies;
- (29) failing to immediately report to the *Administrative Authority* any misdemeanor or felony citations, arrests, and/or criminal charges filed against the *employee*, since becoming employed with the *Judicial Branch*; (Added 08/01/10)
- (30) failing to immediately keep the *Administrative Authority* promptly informed as to the misdemeanor or felony final case disposition; (Added 08/01/10)
- (31) failing to immediately report to the *Administrative Authority* any civil litigation in which the *employee* or an *employee's family member* is a party or participant; (Added 08/01/10; Amended 07/01/14)
- (32) failing to immediately report to the *Administrative Authority* any criminal charges filed or civil litigation pending against a *family member* which may be heard in the *judicial entity* in which the *employee* is employed; or with which an *employee* may have an ongoing professional work relationship or communications; (Added 08/01/10)
- (33) failing to appear to an Order to Show Cause issued by the court; (Added 07/01/14)
- (34) making *unauthorized recordings* of conversations within the court or *judicial entity*; (Added 07/01/14)

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- (35) failing to follow and abide by the New Mexico *Judicial Branch* Code of Conduct; (Added 07/01/14)
- (36) failing to report an arrest for DWI or revocation of drivers' license when a drivers' license is required for the *job*; (Added 07/01/14) (Amended 07/01/19)
- (37) failing to cooperate with an investigation; (Added 07/01/19) and/or
- (38) distributing literature, vending, soliciting, or collecting contributions while on the *job* and/or on *NMJB* premises or property, utilizing court property or assisting with the same, without prior authorization of the *Administrative Authority*. (Added 07/01/19)

Lateral Transfer – An *at-will employee* or *employee's* movement from one position to another position within the same assigned *pay range*. (Amended 08/01/10)

Layoff – An involuntary separation of an *employee* for non-disciplinary reasons due to lack of work or funds.

Leave Without Pay (LWOP) – An authorized unpaid absence from the *job*, which requires prior approval. *Employees* do not accrue annual or sick leave for periods of *leave without pay*. (Added 08/01/10; Amended 07/01/14)

Market Review – *Pay rate* data collected from immediate competitors.

Military Caregiver Leave (also known as *Covered Servicemember Leave*) - Leave taken to care for a service member, due to a single illness or injury, rather than for one continuous period of time, which may include leave of periods from a half hour or more to several weeks. An eligible *employee* who is the spouse, son, daughter, parent, *domestic partner*, or *next of kin of a covered service member* who is entitled to a total of twenty-six (26) *work weeks* of leave during a single twelve (12) month period to care for the service member. (Added 08/01/10)

Multiple Components of Pay (MCOPs) – is a pay rate code entered in addition to an *employee's base pay rate* in the pay comments section in the Job Data Compensation Page in *SHARE*. Examples of *MCOPs* include multilingual pay (MLNG), *Temporary Salary Increase (TSAL)* or *Temporary Promotion (TRPM)*. Upon separation *MCOPs* are not included in an *employee's* terminal leave payout but must be included in *compensatory time* payout. (Added 07/01/19)

Nepotism – Favoritism or influence, or the appearance thereof, especially in granting *jobs*, shown by persons to *family members*, *household members* or *domestic partners*. (Added 08/01/10)

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Next of Kin of a Covered Service Member - The nearest blood relative other than the *covered service member's* spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the *covered service member* by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the *covered service member* has specifically designated in *writing* another blood relative as his or her nearest blood relative for purpose of *military caregiver leave* under the *Family Medical Leave Act (FMLA)*. (29CFR 825.122(d)). (Added 08/01/10)

NMJB – New Mexico *Judicial Branch* (Added 07/01/19)

NMJBPRawe – New Mexico *Judicial Branch* Personnel Rules – Part II for *at-will employees*. (Amended 08/01/10)

NMJBPR – New Mexico *Judicial Branch* Personnel Rules – Part I for *employees*. (Amended 08/01/10)

NMJBPR Committee - New Mexico *Judicial Branch* Personnel Rules Committee. (Added 08/01/10)

NMRA – New Mexico Rules Annotated.

NMSA – New Mexico Statutes Annotated.

Non-Benefited Temporary Employee – An incumbent in a *non-benefited temporary position* is not eligible to accrue annual or sick leave in accordance with the *NMJBPR*, pay into PERA or elect medical benefits. A *non-benefited temporary employee* whose original term of employment was to be less than six (6) months, but is later determined to be longer than six (6) months must be moved into a *Benefited Temporary Position*, so that the *employee* may be offered medical benefits, begin contributing to PERA, and begin accruing leave. See also *Benefited Temporary Employee*. (Added 07/01/14)

Non-Benefited Temporary Position – A position created for a period of less than six (6) months, and whose incumbent does not work more than thirty (30) hours per week or whose service hours equal less than 130 hours per month. *Employees* who work on average thirty (30) hours per week or 130 hours a month are considered *full-time* and eligible for medical insurance under the Affordable Care Act. See also *Benefited Temporary Position*. (Added 07/01/14; Amended 07/01/19)

Non-Partisan Election – Any election to public office in which none of the candidates are nominated or elected as representing a political party and in which party affiliation is not indicated or required.

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Non-Prescription – Substance an *at-will employee* or *employee* possesses, ingests, or otherwise uses that has not been prescribed for use by a *health care provider* licensed to prescribe said substance. (Amended 08/01/10)

Non-Worked Paid Time –Time not counted as *time worked* for the purposes of *non-exempt employees’ overtime* provisions and *premium overtime* compensation; it is time paid at *straight time* for both *FLSA exempt* and *FLSA non-exempt employees* and may include administrative, annual, educational, jury duty, office closure, *holiday*, sick leave, and any other *non-worked paid time* reported by an *employee* over forty (40) hours in a *work week* for an *FLSA non-exempt* or over eighty (80) hours in a *pay period* for an *FLSA exempt employee*. (Added 07/01/14)

Notification in Writing – The *written* form or an alternative format as deemed appropriate delivered in person, by postal service, by facsimile or electronically.

On-Duty – Time during which an *at-will employee* or *employee* is expected to be engaged in *job* duties solely for the purpose of the *employer’s* benefit and for which the *at-will employee* or *employee* receives an hourly wage or salary. (Amended 08/01/10)

Open Recruitment – *Recruitment* from the general public or the *Judicial Branch*. (Added 08/01/10)

Oral Reprimand – A warning delivered verbally and where its occurrence is documented in *writing*.

Organizational Listing Report - The document utilized by New Mexico State Government to reflect agency organizational structure and includes: position number, *job classification* title, *position status*, assigned *pay range*, location code, *employee* name, *employment status*, *compa ratio* and *pay rate*. (Added 08/01/10)

Outside Party - An individual who is not a justice, judge, *employee*, or *at-will employee* of any *judicial entity*. (Added 08/01/10)

Overtime – *Time worked* including *non-worked paid time* in excess of forty (40) hours in a *work week* for *FLSA non-exempt employees* and in excess of eighty (80) hours in a *pay period* for *FLSA exempt employees*. See also *Premium Overtime* definition and *Non-worked Paid Time*. (Added 08/01/10)

Partisan Election – Any election, including primary and run-off for public office, in which the candidate’s party affiliation is indicated and required.

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Part-Time – Generally when an *employee* works less than eighty (80) hours per *pay period* they are considered *part-time*, and their benefits are reduced. For medical benefits under the Affordable Care Act, less than thirty (30) hours per week or 130 hours per month is considered *part-time*. (Amended 07/01/19)

Pay Period – *Regularly scheduled work hours* between 12:01 a.m. on Saturday and 12:00 midnight the following Friday for two (2) consecutive weeks.

Pay Range – A monetary span identifying the lowest and highest value of pay for a *classification*.

Pay Rate – Hourly pay or salary. (Amended 08/01/10)

Period of Service – All *time worked* as a career, term, or *temporary employee*, which may be counted towards an *employee's* leave accrual rate, and to include service in the Judicial, Executive, and Legislative branches including the Public Defender's Office and the District Attorney's Office of the State of New Mexico. (Added 07/01/14)

Permanent Position - A position authorized by the legislature without an end date and defined by the legislature as a permanently funded position.

Position Status - A *full-time* or *part-time* position that is also designated as *permanent*, *term*, *at-will*, or *temporary*. (Added 08/01/10)

Practice of Law - The professional tasks performed by lawyers on a day-to-day basis. (Added 08/01/10)

Premium Overtime - *Time worked* by *FLSA non-exempt employees* in excess of forty (40) hours during a designated *work week* that are accrued at time and one-half. Hours that count towards *premium overtime* compensation (payment or *compensatory time*) include: regular hours worked, training and workshop time, travel time required by management, and voting time. All other *non-worked paid time* reported by an *FLSA non-exempt employee* in excess of forty (40) hours is accrued at *straight time*. (Added 07/01/14)

Pro Bono Work - The designation given to the free legal work done by an attorney for indigent clients and religious, charitable, and other nonprofit entities. (Added 08/01/10)

Probationary Employee – An *employee* who has not completed the *probationary period*.

Probationary Period – A period of one (1) year of continuous employment in the *Judicial Branch* required of an *employee* upon hire into a *Judicial Branch permanent position* or *term position*.

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Continuous leave with or without pay (excluding military leave); in excess of thirty (30) calendar days shall not be counted as *time worked* in calculating the *probationary period*. Any *time worked* as an *at-will employee* shall not be counted towards calculating the *probationary period*. See Section 4.10. A break in employment of at least one (1) work day or more, or transferring from an at-will position will require an *employee* to serve a new *probationary period*. (Added 07/01/14)

Promotion – Movement to a *classification* at a higher *pay range*.

Qualified Applicant – An applicant who meets the minimum qualifications.

Qualifying Exigency Family Medical Leave - Short-notice deployment (where the servicemember must leave within seven (7) days' notice or less); military events and related activities (e.g., to attend informational briefings and learn about family support programs); childcare and school activities (e.g., to arrange for alternative childcare or to attend meetings related to school); financial and legal arrangements (e.g., to make a will or sign a power of attorney); counseling; rest and recuperate (up to five (5) days); and spend time with a *covered service member* who is on short-term leave during the period of deployment; post-deployment activities (e.g., ceremonies to address issues that arise from the death of a *covered service member*; additional activities/other events which arise out of the *covered service member's active duty* or call to *active duty* provided that the *employer* and *employee* agree that such leave qualifies). (29CFR 825.126) (Added 08/01/10)

Reasonable Suspicion – Belief based on specific facts and logical inferences drawn from those facts.

Reclassification – A change in a position's *classification* designation.

Recruitment – Solicitation of applicants for vacant positions in the *Judicial Branch*.

Reduced Leave Schedule - A leave schedule that reduces an *employee's* usual number of working hours per *work week*, or hours per workday. (Added 08/01/10)

Regularly Scheduled Work Hours - A generally fixed work schedule an *at-will employee* or *employee* is required to work or to account for by charging leave. (Added 08/01/10)

Resignation – A witnessed verbal or *written* voluntary separation from service by an *at-will employee* or *employee*. (Amended 08/01/10)

Retaliation – Generally is the act of attacking in return, as in taking revenge, reciprocating, settling a score or getting even; *work place retaliation* may include materially affecting the terms, conditions or privileges of employment. *Retaliation* is an adverse action taken against an

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individual because of an individual's participation in a protected activity, such as reporting concerns, filing a *complaint* or participating in an investigation regarding *harassment*, *sexual harassment*, *discrimination*, or *retaliation*. (Amended 9/15/14, 07/01/19) (See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation Policy*)

Salary Alignment – A change in salary designed to correct pay inequities in like *jobs* due to salary compression or external market forces. (Added 08/01/10)

Serious Health Condition - An illness, injury, impairment, or physical or mental condition that involves either: (29CFR 825.113) (Amended 08/01/10)

- (1) Inpatient care (e.g., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (e.g., inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; (Amended 08/01/10) or
- (2) Continuing treatment by a *health care provider* which includes:
 - a. A period of incapacity lasting more than **three (3) consecutive, full calendar days**, and any subsequent treatment or period of incapacity relating to the same condition, that **also** includes: (Amended 08/01/10)
 1. treatment two (2) or more times by or under the supervision of a *health care provider* (e.g., in-person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); (Added 08/01/10); or
 2. one (1) treatment by a *health care provider* (e.g., an in-person visit within seven (7) days of the first day in incapacity) with a continuing regimen of treatment (e.g., prescription medication, physical therapy); or
 - b. Any period of incapacity related to pregnancy or for prenatal care. A visit to the *health care provider* is not necessary for each absence; or
 - c. Any period of incapacity or treatment for a chronic *serious health condition*, which continues over an extended period of time, requires periodic visits (at least twice a year) to a *health care provider*, and may involve occasional episodes of incapacity. A visit to a *health care provider* is not necessary for each absence (e.g., asthma, diabetes, epilepsy, etc.); (Amended 08/01/10) or
 - d. A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a *health care provider* is required, rather than active treatment (e.g., Alzheimer's, stroke, terminal diseases, etc.); or

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- e. Any absences to receive multiple treatments for restorative surgery or for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.). (Amended 08/01/10)

Serious Injury or Illness (of a *covered service member*) - An injury or illness incurred by a *covered service member* in the line of duty on *active duty* that may render the service member medically unfit to perform the duties of his or her office, rank or rating. (29CFR 825.127(a)(1)) (Added 08/01/10)

Service – May be accomplished by hand delivery, U.S. Certified Mail/Return Receipt Requested, successful facsimile transmission or electronic mail transmission.

Sexual Harassment – Behavior of a sexual nature that is unwelcome, unwanted and personally offensive to a recipient and may include but is not limited to requests for sexual favors, sexual advances, other verbal, nonverbal, graphic, or physical conduct of a sexual nature that is suggestive, or obscene e-mails, letters, notes, or invitations; derogatory comments, epithets, lewd language, slurs or jokes; impeding or blocking movements; touching or any physical interference with normal work; sexually oriented gestures; the display of sexually suggestive or derogatory objects, pictures, cartoons, or posters; and such behavior is severe, persistent and pervasive, interfering with or limiting a person’s ability to perform his or her job. May be a single threat or insinuation that submission to or rejection of sexual favors may explicitly or implicitly be a condition used as the basis for employment decisions, such as, reprisals, withholding support for reappointment, *promotions* or transfers, or change of assignment. (Added 08/01/10; Amended 9/15/14, 07/01/19) (See the *Harassment, Including Sexual Harassment, Discrimination and Retaliation Policy*)

SHARE – The state of New Mexico State Human Resource Management System. (Added 07/01/19)

Shift Differential Pay - A premium rate applied for work regularly scheduled between 6:00 p.m. and 7:00 a.m. (Amended 08/01/10)

Stand-By - Time an *employee* is required to remain available to come to work if called. (Added 08/01/10)

Straight Time – *Time worked* that is measured hour for hour.

Subject Matter Experts (SMEs) – *At will employees* or *employees* who occupy and who have substantive knowledge of *job classifications* involved in a *classification study*. (Added 08/01/10)

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Supervision - The action, process, or occupation of supervising; a critical watching and directing (as of activities or a course of action); recommends the hiring or *termination* of an *at-will employee* or *employee* and evaluates the performance of two (2) or more subordinate *at-will employees* or *employees* performance. (Added 08/01/10)

Suspension Without Pay – An involuntary leave of absence without pay for disciplinary reasons.

Temporary Employee - An *at-will employee* who occupies a *temporary position* without designated funding, that is generally for less than one (1) year. (Added 08/01/10)

Temporary Position – A position with a duration of not more than one (1) year, and generally funded through vacancy savings. (Amended 08/01/10) An incumbent hired into a *benefited temporary position* is eligible to accrue annual and sick leave in accordance with the *NMJBPR*, pay toward PERA and may elect medical benefits. An incumbent hired into a *non-benefited temporary position* is not eligible to accrue annual or sick leave, elect medical benefits, or pay into PERA unless the incumbent’s term exceeds six (6) months or more. (Added 07/01/14) See also *Benefited Temporary Position*.

Temporary Salary Increase or Temporary Promotion – The *appointment* of an *at-will employee* or *employee* to a position in a higher *pay range* on a temporary or acting basis. (Amended 08/01/10; 07/01/14)

Term Employee – An *employee* who occupies a *term position* that is funded by special funds. (Amended 08/01/10)

Term Position – A position with a specific end date that is funded by special funds. (Amended 08/01/10)

Termination – An involuntary separation from employment for disciplinary reasons.

Time Worked – In addition to an *employee’s regularly scheduled work hours*, *time worked* includes training and workshop time, travel time required by management and voting time. See also the definition for *Premium Overtime*. (Added 07/01/14)

Unauthorized Recording – the recording of a conversation without the consent of the person(s) being recorded. (Added 07/01/14)

Voluntary Classification Reduction – A movement to a job *classification* with a lower *pay range* at the *employee’s* request with the *Administrative Authority’s* concurrence. (Amended 07/01/19)

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Witness - An individual who has direct or indirect knowledge of the incident(s) relevant to an investigation. (Added 08/01/10)

Work Place - A site for the performance of work. This includes buildings and grounds for such sites. It also includes the location of any work-related travel between work sites or work-related travel in the course and scope of employment. (Added 08/01/10)

Work Week – *Regularly scheduled work hours* between 12:01 a.m. on Saturday and 12:00 midnight the following Friday.

Writing or Written – A *written* form and/or an alternative format, such as e-mail, as deemed appropriate.

Written Reprimand – A warning delivered and documented in writing given to an employee. (Amended 07/01/19)